IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Docket No.

92-70680

In re

VICKI J. AZNARAN and RICHARD N. AZNARAN,
Petitioners, Plaintiffs and Counterdefendants

v.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

CHURCH OF SCIENTOLOGY INTERNATIONAL, CHURCH OF SPIRITUAL TECHNOLOGY, AUTHOR SERVICES, INC., RELIGIOUS TECHNOLOGY CENTER,

Real Parties In Interest.

On A Petition For A Writ Of Mandamus
From Orders Of The United States District Court
For The Central District Of California
CV88-1786-JMI (Ex)

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PETITION FOR WRIT OF MANDAMUS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Secondary Authorities

I. STATEMENTS OF JURISDICTION, APPEALABILITY AND TIMELINESS

A. Jurisdiction In The District Court

Subject matter jurisdiction in the District Court, sitting in diversity, is predicated upon 28 U.S.C. § 1332, in that plaintiffs and petitioners, Richard N. Aznaran and Vicki J. Aznaran, [1]/ are both citizens of the State of Texas, and all of the defendants [2]/ are deemed citizens of California as each is a corporation organized under the law of that state with its principal place of business in Los Angeles.

B. Jurisdiction In The Court Of Appeals

This Court has jurisdiction to review an order transferring this case to the Northern District of Texas pursuant to the All Writs Statute, 28 U.S.C. §§ 1294 (1) and 1651 (a).

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[1] Petitioners hereinafter will also be referred to as the "Aznarans" or "plaintiffs."

[2] Defendants Church of Scientology International ("CSI"), Church of Spiritual Technology ("CST"), Religious Technology Center ("RTC"), and Author Services, Inc., ("ASI") will also be referred to collectively as "defendants" or "Scientology."

C. **Appealability**

Petitioners seek review of a pre-trial order of transfer from the Central District of California to the Northern District of Texas issued pursuant to 28 U.S.C. § 1404 one year after the close of all discovery, and after the case had been set for trial. Said order of transfer, the consequence of which is tantamount to a dismissal of the case, was personally signed by the District Court Judge assigned to the case on August 26, 1992, filed August 27, 1992, and entered August 28, 1992. This occurred even though a motion to recuse said Judge had been previously filed by the defendants on August 25, 1992, and was still pending, a motion which, per local rule, divested said Judge of all power to take any action in the case, including the subject order of transfer. This was the second motion of recusal filed by the defendants against this Judge, the first one having been denied nearly one year ago and said denial was upheld by the United States Supreme Court when it denied defendants' petition for writ of certiorari on May 26, 1992. (No. 512*) [3]

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[3] The citations designated "No. ____" or "No. ____, Ex. ___" are to the corresponding designation to the parties' papers and/or district court's orders set forth in the District Court Docket pursuant to Fed.R.Civ.P. 79. Those items designated "No. ____*" reflect the fact that said item is before this Court as an Excerpt Of The Record below presented in support of this Petition for Writ of Mandamus. Citations to any exhibits that are not part of the Clerk's Docket Sheet and which are submitted in further support of this petition will be designated "Ex. __".

Reconsideration thereof was denied by an order entered on September 17, 1992. (No. 518*) After reconsideration was denied, on September 18, 1992 the court denied petitioners' ex parte application for stay of transfer of the file pending the District Court's determination of petitioners' reconsideration motion. (No. 519*) Petitioners have been informed, however, that the file is still in the Central District and will remain there for several more months until the file's 65 volumes have been copied by the clerk. In the meantime, the District Court Judge erroneously stated in his order denying petitioners' motion for reconsideration that entry of the transfer order on August 28, 1992, was inadvertent, and that the correct date was August 24, 1992, one day before the recusal motion was filed by defendants. In so stating, however, the Judge obviously failed to note his personal signature and date on the order of transfer of August 26, 1992, one day after the recusal motion was filed.

In short, the Judge has erroneously stated that he entered an order two days before he signed it. As will also be seen, the order of transfer not only reflects this extreme irregularity, it also reflects a complete failure to properly consider the merits of what petitioners had presented in opposition to the motion for transfer.

Said orders of transfer pursuant to 28 U.S.C. § 1404 (a) are subject to appellate review by writ of mandamus. See, Sunshine Beauty Supplies v. U.S. District Court (9th Cir. 1989)

872 F.2d 310; NBS Imaging Systems v. United States District Court (9th Cir. 1988) 841 F.2d 297; Varsic v. United States District Court (9th Cir. 1979) 607 F.2d 245.

D. The Timeliness Of The Petition

The timeliness of a petition for mandamus is governed by the equitable doctrine of laches. Equal Employment Opportunity Commission v. K-Mart Corp. (6th Cir. 1982) 694 F.2d 1055, 1060. The District Court order at issue was signed on August 26, filed on August 27, and entered on August 28, 1992. (No. 512*) Reconsideration of said order was denied by order signed and filed September 15 and entered on September 17, 1992 (No. 518*) and the denial of the ex parte application was signed and filed September 17 and entered on September 18, 1992. (No. 519*)

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the District Court Judge exceed his authority under Central District General Order No. 224, which prohibits any action in a case by a Judge during the pendency of any recusal motion against that Judge, by ordering the subject transfer after a second motion to recuse him had been filed by the defendants and while that motion

was still pending? [4]/

2. Did the District Court Judge exceed his authority when, 18 days after his order of transfer had been entered, he attempted to amend the date of entry to reflect entry one day before rather than three days after the motion to recuse had been filed, an amended date of entry which said Judge apparently failed to note was two days before he personally signed and dated the order of transfer?

3. Was the District Court Judge incorrect as a matter of law when he ordered said transfer to Texas after the close of all discovery in the case, and after the case had been set for trial, an order which, because of the unavailability of essential witnesses in Texas, is tantamount to a dismissal of the petitioners' case?

4. Was the District Court Judge incorrect as a matter of law and fact when he failed to give proper weight to petitioners' choice of forum and to the fact that the proof essential to establish the petitioners' case is

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[4] General Order No. 224 adopts as the rule in the Central District for all recusal motions the rule of 28 U.S.C. § 144 that upon filing of a motion to recuse, the judge "shall proceed no further" and another judge must be assigned to hear the matter. This was the procedure used by the challenged District Court Judge when the defendants filed their first recusal motion against him in September, 1991. Then, he proceeded no further in the case until another judge, and the United States Supreme Court had decided, that the recusal motion was without merit.

available only in California and not in Texas?

5. Was the District Court incorrect as a matter of law when it concluded that its familiarity, as a court sitting in diversity jurisdiction, with both the case before it and the California law applicable thereto was a factor which supported, rather than opposed, transfer of the case?

7. Does the District Court's (1) adoption of defendants' misstatements of the record, (2) use of Rule 60 (a) to give itself jurisdiction to act when it had none, and (3) complete indifference to the merits of petitioners' arguments against transfer present a disregard of the federal rules or a new and important problem which merits the issuance of a writ of mandamus?

III. STATEMENT OF THE CASE

A. Nature Of The Case

As will be seen, this matter is properly before this Court on petition for writ of mandamus from a District Court order of transfer which is tantamount to dismissal of the petitioners' case and tantamount to depriving them of their right to counsel. It is an order of transfer made and entered after closure of all discovery in the case and after the case had been set for trial, the consequence of which is to deprive petitioners

of those witnesses, subject only to Central District subpoena, who are necessary to establish their case. These witnesses, who have been intimidated by Scientology, and/or who have agreements with Scientology not to testify except by subpoena, are all located in the Los Angeles area and are not subject to the subpoena power of the Northern District of Texas.

The assertion that the order of transfer is tantamount to dismissal may seem extreme but, after reading these papers, it will become clear that litigation involving the Church of Scientology is always a matter of extreme and that litigants always face and must contend with legal and illegal acts on the part of Scientology intended to deprive them of their day in court. This includes, as at bar, multiple efforts to recuse judges assigned to the case and to disqualify or intimidate counsel hired by petitioners.

What has happened here is that the District Court has signed and entered an order transferring this case from the Central District of California to the Northern District of Texas which, because of the timing of the entry of that order and a prior motion to recuse the District Court, was void on its face. Three weeks subsequent to the order of transfer, the District Court attempted to correct this error by signing a second order stating that the date of entry of the transfer order was inadvertently erroneous and that the date of entry should have preceded by one day the date of the motion to recuse the court.

The signature by the District Court in its own handwriting on the order of transfer is dated one day after the motion to recuse was filed.

For reasons unknown to the petitioners, the challenged District Court Judge felt compelled to state that the actual date of entry was erroneous. [5]/ However, in so doing, the District

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[5] What petitioners do know, however, is that in other cases against Scientology in other courts, Scientology has not hesitated to intimidate or to attempt to compromise the judges assigned to the case. Scientology has a long history of attempting to intimidate and co-opt members of the judiciary that it considers its enemies. Petitioner Vicki J. Aznaran, a former member of Scientology's Sea Organization, is also the former President of defendant RTC. As such, she was briefed on Scientology's litigation tactics. (No. 125 at Ex. D* at 37:7-38:6) While Vicki was President of RTC, she was quite involved in RTC's litigation strategies "and became generally aware of Scientology's dirty tricks and legal maneuvers." (Id. at 39:14-40:2) In November 1985, Ms. Aznaran was present at a meeting with Scientology lawyer Earle Cooley and two other high-ranking Scientologists who announced they were going to contact United States District Judge Mariana Phaelzer who earlier that day had denied a Scientology motion for a temporary restraining order. During the discussion about how to handle Judge Phaelzer, Mr. Cooley exhibited a file that contained background and personal information on the Judge and announced that they would attempt to meet Judge Phaelzer at her home. (Id. at 42:22-43:9)
Ms. Aznaran has also testified that

> "21. During the time of my involvement with Scientology, I also learned of various attempts to influence judges or force their removal from cases. For example, a private investigator named Dick Bast obtained a statement from a prostitute concerning involvement with a certain judge in Washington, D.C. who was sitting on a Scientology case. This was then publicized. The judge did not continue on the case. The same investigator, Dick Bast, was also hired for the purpose of attempting to force the removal of a judge in Tampa, Florida. This involved what I know as

(continued...)

Court Judge obviously failed to note that it had signed the order in its own handwriting both after the motion to recuse was filed, and after the date that the court has now stated to be the correct date for the entry of the order. Now, unless an order can be entered before it is made and signed, the order pertaining to the inadvertent entry is as void and illegal as the order of transfer itself.

That such a thing should happen would come as a surprise to those uninitiated in the practice of litigation against the Scientology organization. To those, however, such as petitioners and their counsel as bar, it is no surprise, but no less disturbing. A review of the history of the efforts by Scientology in this case to recuse any judge hearing the case and to eliminate any counsel representing the plaintiffs is

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[5](...continued)

the Burden case, which was civil litigation brought by Michael Flynn. Dick Bast secured a yacht and attempted to get the judge on board for the purpose of filming him under compromising circumstances. The judge declined to go yachting and the operation was unsuccessful. Approximately, $250,000.00 was spent on the operation."

(Id. at 45:19-46:5) This plot was the subject of an in-depth article by James B. Stewart, Jr., entitled "Scientology's War Against Judges" (Dec. 1980) American Lawyer. (No. 125, Ex. L*) [Multiple recusal motions filed against Judge Charles Richey, U.S. District Court, District of Columbia, the final one of which made reference to information obtained by Scientology investigator, Dick Bast, which Bast ultimately released to the columnist Jack Anderson and the general press. Bast released the videotaped interview with a prostitute regarding the services she provided to Judge Richey.]

illustrative, e.g. covert operations against Elstead and Greene and a motion to disqualify them.

This case presents an issue of first impression in any Circuit. More than four years after the case had been filed and almost one year after the court had cut off discovery and motion practice, and after the case had been twice set for trial, the District Court allowed defendants to file, and then in violation of its own rules prohibiting a court to act while a motion to recuse was pending, granted defendants' motion to transfer the case from the Central District of California to the Northern District of Texas.

The court disregarded the extreme prejudice to plaintiffs caused by its transfer order. Witnesses crucial to plaintiffs' case reside in the Los Angeles area and will not testify unless subpoenaed. Plaintiffs did not take their depositions, due to the fact of the availability of prior sworn and relevant testimony in other Scientology-related litigation. [6]/ Now, after discovery is closed, the court's transfer order has eliminated these witnesses' availability. In addition, the order has made it prohibitively expensive for plaintiffs to litigate their case, and has adversely affected their ability to be represented by the counsel of their choice.

Petitioners, husband and wife residents of Dallas,

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[6] See, footnote 30, at pp. 42-43, infra.

Texas, are two former high-ranking, top-management level Scientologists who for 15 years were subjected by defendants to mental and physical torture - constituting various on-going torts in the Central District - including false imprisonment, fraud, intentional infliction of emotional distress and loss of consortium. Defendants each reside in the Central District.

Petitioners are now subject to a transfer order which poses serious consequences for them because it is tantamount to a dismissal of their case. They have also retained California counsel and California expert witnesses in anticipation of trial in California, counsel and witnesses who are unavailable to try the case in Texas, a state where, also, the petitioners anticipate extreme difficulty in finding other counsel willing to try their case. It is not unusual in cases involving Scientology for plaintiffs to have difficulty in finding counsel because, historically, all such counsel have been exposed to extreme intimidation and pressure tactics by Scientology.

The issues raised in this petition will recur for the remainder of this litigation, and unless this petition is heard there can be no review of the issues until a final judgment is entered. This is, as is demonstrated below in detail, an extraordinary case, calling for the exercise of this Court's supervisory powers. See, e.g., Schlagenhauf v. Holder (1964) 379 U.S. 104, 111-12; LaBuy v. Howes Leather Co. (1957) 352 U.S. 249, 254-55. See generally Comment, Supervisory and Advisory

Mandamus Under The All Writs Act, 86 Harv.L. Rev. 595 (1973).

B. **The Challenged Order**

Petitioners have no adequate remedy, by direct appeal or otherwise. If they are forced to try their case in Texas, they will be immediately harmed in ways not correctable on appeal, or otherwise. This is because the proof needed to establish their case is simply not available in Texas, and the associated costs would eliminate their ability to try the case. Further, the district Judge's order is clearly erroneous as a matter of law, in that (1) the transfer order was issued in violation of the Central District's own General Order requiring a judge not to act after a motion to recuse has been filed and is pending, (2) the District Court totally disregarded petitioners' proffer of facts as to why the case should not have been transferred, (3) on reconsideration the District Court improperly attempted to backdate the entry of the transfer order two days before it had even signed said order, (4) the District Court adopted defendants' misstatements of the record in order to avoid determining the merits of petitioners' opposition to transfer to which its attention had specifically been directed by petitioners' motion for reconsideration, (5) all of what occurred involves a grievous and prejudicial misconstruction of 28 U.S.C. § 1404 (a) and the case law which construes the same.

Finally, the District Court's order raises a new and important problem, a legal issue of first impression: can a District Court transfer a case after the close of discovery and prevent petitioners from carrying their burden of proof? After 4 and 1/2 years of litigation, and the close of discovery, can the District Court ignore the fact that its decision to transfer will eliminate the availability of petitioners' crucial witnesses by removing such witnesses from the District Court's subpoena power?

Can the District Court order the change of the date of entry of the order of transfer to precede the date the court signed and dated the order when the effect of the change of date is to allow the District Court to act, where otherwise it would have been prohibited to act?

C. Course Of Proceedings Below

1. Proceedings Preceding Transfer Of Case

Plaintiffs' complaint was filed on April 1, 1988. (No. 1*) Within the first 20 days of Scientology's appearance, it noticed 19 depositions between California and Texas all for a 14 day period (Nos. 3-21), successfully moved to disqualify trial Judge William D. Keller, (Nos. 37, 59), [7] and moved to dismiss the case on First Amendment grounds. (No. 50)

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[7] The case was reassigned to the Honorable James M. Ideman whose orders below are the subject of this petition.

Five days after the Aznarans' counsel, Barry Van Sickle of the law firm of Cummins and White, filed an effective opposition to Scientology's motion to dismiss (No. 65), Scientology successfully moved to disqualify him. (No. 69) [8]/

Due to Scientology's well-known and widely-feared litigation tactics, [9]/ for over five months from September 6,

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[8] The primary basis for the disqualification of Cummins and White was the fact that "Plaintiffs and Joseph Yanny, former attorney for Defendants, share the same attorney (Barry Van Sickle) in separate actions against Defendants. There is a possibility of confidences being revealed by Yanny to Van Sickle that could spill over into Van Sickle's representation in the Plaintiffs' action." (No. 102 at 2:13-18)

Scientology sued Yanny in 1988 (No. 120, Ex. N), in part because of his relationship with the Aznarans. Scientology lost. (See, No. 441, Ex. A, Statement of Decision filed July 18, 1990 by Hon. Raymond Cardenas in Religious Technology Center v. Yanny, Los Angeles Superior Court, Case No. C 690 211)

[9] No. 120 (Motion for Stay) at Ex. C* (Decl. of Vicki J. Aznaran detailing difficulty finding legal representation against Scientology) at ¶¶ 2, 5, 8, 13, 14, 16, 17, Ex. F* (Decl. of Vicki J. Aznaran detailing her first-hand knowledge of Scientology's "dirty tricks" in litigation) at ¶¶ 8-14, 20, 22, 25, Ex. G* (Decl. of Joseph A. Yanny, former counsel of Scientology, describing Scientology's "dirty tricks in litigation), Ex. J* (Decl. of Joe Novara describing Scientology investigator's statements to him that anti-Scientology attorney Gary M. Bright was involved in "specific criminal activity") and Ex. P* (Decl. of Barry Van Sickle describing prominent plaintiffs' counsel advising him that "life was too short to litigate against Scientology."

No. 125 (Motion for Reconsideration) at Ex. G* (Declaration of Gary M. Bright, Esq. regarding personal experience of Scientology harassment described by Joe Novara as litigation tactic), Ex. J* (Boston Globe (5/31/83) "Scientology Defectors Charge 'Dirty Tricks' In Boston") and Ex. L* (American Lawyer (12/1980) "Scientology's War Against Judges.")

1988 when their counsel was disqualified (No. 102), [10]/ the Aznarans were unable to obtain counsel until February 15, 1989, when they retained Ford Greene. (No. 183) [11]/

While the Aznarans were in pro per, on December 12, 1988 Scientology filed a motion for summary judgment on the issues of certain releases and waivers (No. 140) which ultimately was denied on May 25, 1989. (No. 219) [12]/

On July 17, 1989, trial was first set for April 9, 1991. (No. 237) Pursuant to stipulation and order filed February 27, 1991, the trial date was continued to October 15, 1991. (No. 349)

On November 7, 1990, defendants filed their second motion for summary judgment attacking the sufficiency of all plaintiffs' claims (No. 323) which was denied on April 26, 1991.

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[10] During this time ASI, CST, RTC, and CSI filed their Answers and Counterclaims on September 19, 1988 (Nos. 109*, 110*, 111*, 112*) which petitioners answered. (Nos. 122*, 123*, 124*)

[11] After Greene's entry into the case, Scientology private investigators surveilled his home and office around the clock and thereafter instigated a full-on attack in an attempt to remove Greene from the case by attempting to engineer his disbarment. In furtherance thereof, Scientology investigator Eugene Ingram has generated perjury investigations of Greene by the Federal Bureau of Investigation and the Los Angeles County District Attorney's Office. Neither investigation resulted in any prosecution.

[12] Thereafter, Scientology sought to enforce the releases and waivers by means of a motion for a preliminary injunction. (No. 256) After the court denied that motion on January 9, 1990, (No. 264), Scientology unsuccessfully appealed to this Court in No. 90-55288. (Ex. A) See Statement of Related Cases, infra.

(No. 353)

In June 1991, despite the fact the Aznarans were represented by Greene, Scientology's counsel approached Barry Van Sickle and invited him to extend communications regarding settlement to the Aznarans and to act on their behalf. Scientology offered to settle the Aznarans' case on the condition that they discharge their counsel, Ford Greene. After Van Sickle relayed the information to the Aznarans, they released Greene. (Nos. 356, 357) Then, Scientology withdrew its offer to settle. (No. 441 at 17-25) On June 19, 1991, while the Aznarans were without counsel, Scientology served a 72-page motion for summary judgment against all the Aznarans' claims on statute of limitations grounds and waited until July 1, 1991 to file it. (No. 354)

Faced with a substantial and potentially dispositive summary judgment motion, the Aznarans substituted Joseph A. Yanny in the place and stead of themselves on July 1, 1991 (No. 358, 359), meanwhile seeking John C. Elstead as trial counsel.

On July 22, 1991, defendants filed their fourth motion for summary judgment, this time on First Amendment grounds. (No. 376)

On July 24, 1992, the court summarily vacated the substitution of Joseph A. Yanny as the Aznarans' counsel [13]/ and

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[13] As noted in footnote 8, at p. 14, supra, Yanny had formerly been Scientology's counsel. He substituted into the

(continued...)

reinstated Ford Greene as attorney of record. Anticipating trial commencing on October 15, 1991 the court also set August 19, 1991 as the motion cut off date. (No. 387)

At the time the District Court reinstated Greene, it was unaware that the Aznarans had an agreement for representation with attorney John C. Elstead. On August 2, 1991, when Elstead, as trial counsel, associated with Greene (Nos. 396-400), discovery was closed, potentially dispositive summary judgment and other motions were pending, and trial was set. Thereafter, after some months of uncertainty the court ordered Elstead substituted as plaintiffs' counsel. (No. 481) [14]/

On July 29, 1991, defendants moved to exclude the testimony of plaintiffs' designated expert, Margaret Singer (No. 388) and for a separate trial on the affirmative defenses of release and waiver. (No. 390)

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[13](...continued)

Aznaran case in order to prevent injustice because the Aznarans were about to lose their case, having no way to effectively respond to the pending summary judgment motion. Scientology rebuffed Yanny's attempts to negotiate a continuance to allow the Aznarans time to obtain proper counsel.

Thereafter, based upon Yanny's substitution on the Aznarans' behalf in July 1991, Scientology sued Yanny again in Religious Technology Center v. Yanny, Los Angeles Superior Court, Case No. BC 033 035. Scientology lost again. (Ex. B)

[14] In an effort to disqualify Elstead, defendants, through their private investigator Eugene Ingram, filed a complaint with the State Bar claiming a conflict of interest based upon the false assertion that Elstead and Greene were counsel of record in another case. Ingram was fired by the Los Angeles Police Department for operating a prostitution ring.

Scientology filed declarations on August 29, 1991 from private investigators regarding around-the-clock surveillance which had been conducted on Greene's office after the Court reinstated Greene as the Aznarans' counsel. (No. 429)

On August 30, 1991 the District Court allowed all late filings in the case and warned that

> "In light of the flagrant misconduct of both sides in this action, all pending requests for sanctions are hereby DENIED. Counsel is put on notice, however, that should they continue to engage in outrageous litigation tactics, the Court will not hesitate to use its sanctioning power."

(No. 432)

After these efforts by Scientology to eliminate or intimidate the Aznarans' legal representation failed, it turned its attention on the District Court, filing its second motion to recuse the District Court on September 5, 1991. (No. 450) [15]/ Upon receipt of the motion to recuse and in compliance with

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[15] In its motion to recuse Judge Ideman, Scientology stated as its basis that "virulent religious bigotry has infested Judge James M. Ideman." (No. 455 at 1:27-28) An additional basis for the motion was that Ava Chromoy, a 16-year member of Scientology, claimed to deliver a brief to a law clerk for Judge Ideman who took Chromoy to the court's staff area where she claimed to observe "a framed copy of the May 6, 1991 Time Magazine cover entitled "Scientology: The Cult Of Greed" hanging on the wall of Judge Ideman's Chambers." (No. 467 at 27:11-20) (See No. 467, Ex. AA* at 180-188 for copy of said article.) After using its 16-year member to claim said fact, Scientology stated "To a Scientologist, the display of that cover on the Court's walls is the precise equivalent of the display of Nazi propaganda on the wall of a Court presiding over matters involving Jewish temples." (No. 467 at 4:9-12)

General Order No. 224, Judge Ideman vacated the October 15, 1991, trial date, and forebeared from ruling on the pending motions. (No. 458)

The motion to recuse Judge Ideman was denied on October 25, 1991, by the Honorable J. Spencer Letts. (No. 468) During the course of the hearing before Judge Letts on the motion to recuse Judge Ideman, Judge Letts was required to have the United States Marshall escort Earle Cooley, one of Scientology's counsel, out of the courtroom because of Cooley's outrageous and unrestrained behavior. (Ex. C, Excerpt of Transcript of Proceedings, at 6:15-8:24) After counsel Cooley had been removed from the courtroom, Marty Rathbun, a Scientology member, purported to act as an attorney, and addressed the court. He too, was removed by the United States Marshall. (Ex. C, 20:13-21:24) Judge Letts characterized the conduct of Scientology and its counsel during the hearing as "flagrant misconduct." (Ex. C, 23:4-7) [16]/

On June 20, 1992, Scientology moved to disqualify the Aznarans' counsel, John C. Elstead. (No. 489) On July 23, 1992,

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[16] The district court's denial of defendants' recusal motion thereafter became the subject of an unsuccessful petition for a writ in this Court. (see Notice Of Related Cases, infra. Case No. 91-70659 in which an order denying writ was filed December 4, 1991, and order denying en banc review was filed January 30, 1992 [Ex. D])

On May 26, 1992, Scientology's Petition for a Writ of Certiorari regarding its attempt to recuse Judge Ideman was denied by the United States Supreme Court. (see Case No. 91-1376 [Ex. E])

the District Court denied the motion. (No. 503)

On June 23, 1992, the District Court denied defendants' motion for summary judgment on statute of limitations grounds, motion for summary judgment on first amendment grounds, motion to exclude the testimony of plaintiffs' expert witnesses, motion for separate trials, and motion to confine plaintiffs to theories of recovery set forth on status conference statement. (No. 491)

2. Proceedings Directly Relating To Transfer Of Case

Based upon the District Court Clerk's Docket Sheet, the sequence of filing of motions and filing and entry of orders relating to the transfer order is as follows:

- July 22, 1992: Defendants filed one motion to transfer the case to the Northern District of Texas (No. 499*), and a motion requesting the court to certify for interlocutory appeal its denial of the statute of limitation and first amendment summary judgment motions and refusal to exclude the testimony of plaintiffs' designated expert, Margaret Singer. (No. 500)
- August 24, 1992: The court filed its order (signed on August 21 and entered August 26, 1992) denying defendants' motion to certify issues for interlocutory appeal. (No. 510*)

- August 25, 1992: Defendants filed their notice of motion and renewed motion to recuse the Honorable James M. Ideman. (No. 511*)
- August 27, 1992: The court filed its order (signed on August 26 and entered August 28, 1992) granting defendants' motion to transfer the case to the Northern District of Texas. (No. 512*)
- August 28, 1992: Defendants lodged an ex parte application for permission to file their already-filed recusal motion. (Ex. F)
- September 11, 1992: Plaintiffs filed their notice of motion and motion for reconsideration of the court's order granting defendants' motion to transfer the case to the Northern District of Texas. (No. 514*)
- September 14, 1992: Defendants filed their notice of withdrawal of motion to recuse the Honorable James M. Ideman on the basis that the transfer order made the recusal motion moot. They falsely stated in said notice that their August 28 ex parte application "accompanied" the recusal motion (No. 516*) which had been filed August 25, 1992.
- September 14, 1992: Plaintiffs filed their ex parte application for an order that the clerk maintain possession of the file pending the court's determination of the motion for reconsideration. (No.

515*)

- September 15, 1992: The court filed its order (signed September 15 and entered September 17, 1992) denying plaintiffs' motion for reconsideration of order granting motion for change of venue to Texas on the basis that defendants had withdrawn their recusal motion and the District Court ordered that the date its transfer order was entered be changed to August 24. (No. 518*)
- September 17, 1992: The court filed its order (signed September 17 and entered September 18, 1992) denying plaintiffs' ex parte application for order that the clerk maintain possession of the file pending determination of plaintiffs' motion for reconsideration, and adopted defendants' false statement that the ex parte application had "accompanied" the motion to recuse. (No. 519*)

3. The Order Granting Scientology's Motion For Transfer

On defendants' transfer motion, the District Court entered a written order on August 28 wherein it found as follows:

1. Many of Plaintiffs' claims do not have their basis in facts alleged to have occurred in California, but arose in Texas.

2. Plaintiffs reside in the receiving district.

3. Many of the witnesses who will testify at trial live in Texas.

4. "Defendants indicate that they are willing to stipulate that they will make staff who are percipient witnesses available at trial . . . at their expense."

5. "Although the fact that this case has been pending for a considerable length of time weighs against transfer, there is merit to Defendants' argument that their delay in bringing the motion was at least partially caused by the fact that the nature of the proof they would have to produce was largely dependant on the resolution of the motions that the Court has addressed over the years."

6. ". . . Plaintiffs' argument that transfer would eliminate the Court most familiar with Scientology-related litigation, in general, weighs in favor of transfer rather than against it. Any perceived 'Scientology expertise' relied upon by Plaintiffs in choosing this forum is misguided. The judges of this Court do not, by any means, consider themselves 'Scientology experts.' In any event, since a trial court should attempt to avoid intimate knowledge about the parties that may color its judgment in a case, this argument only lends force to Defendants' contention that transfer is appropriate."

7. ". . . no pre-trial or trial date is currently set in this matter."

(No. 512*)

4. Petitioners' Reconsideration Motion Leads To Defendants' Withdrawal Of Motion To Recuse

Petitioners filed and served their motion for reconsideration on September 11, 1992. (No. 514*) One basis for reconsideration was the fact that the pending motion to recuse prevented the District Court from making the transfer order. On

September 14, 1992 Scientology "withdrew" its pending motion to recuse Judge Ideman. (No. 516*) Scientology stated:

> "PLEASE TAKE NOTICE that Defendants' renewed Motion to Recuse the Honorable James M. Ideman, previously filed in this case without leave of Court, [fn. 1: The motion was sent to the Court accompanied by an ex parte application for leave to file the motion out of time. The ex parte application was returned to defendant by the clerk, after defendants received the Court's Order of August 28, 1992. Defendants thus were never granted leave to file the motion at all, and considered it lodged but not filed. This notice formally confirms that defendants no longer intend their motion to be heard or considered.] is withdrawn as moot. The case had been transferred to the Northern District of Texas." Ibid. (emphasis added)

5. The Order Denying The Aznarans' Motion For Reconsideration

On September 17, 1992 the District Court entered the order it issued on September 15 denying plaintiffs' motion for reconsideration. Therein, the court stated:

> "Pursuant to Federal Rule of Civil Procedure 60(a), this Court HEREBY AMENDS that August 28, 1992 Order granting transfer of this action to the United States District Court for the Northern District of Texas. Due to clerical inadvertence, the incorrect date was transcribed onto the August 28, 1992 Order. The date the decision to transfer was rendered and the date which should have been recorded was August 24, 1992. The Order of August 28, 1992 should be construed in this light.
>
> Notwithstanding this Court's error, the Court understands that defendants have submitted a motion to withdraw its motion for recusal. As such, there are no issues pending before this Court, and the action is properly transferred to Texas.
>
> IT IS HEREBY ORDERED:

1. Plaintiffs' motion for reconsideration of this Court's order granting motion for change of venue to Texas is HEREBY DENIED.

IT IS SO ORDERED."

(No. 518*)

On September 18, 1992 the District Court entered an additional order providing further support for it order of transfer. (No. 519*) Although the District Court's denial of reconsideration (No. 518*) mooted petitioners' application for an order that the clerk maintain possession of the file while reconsideration was pending, the court ruled on said moot application anyway and ordered:

"IT IS HEREBY ORDERED:

1. Plaintiffs' ex parte application for court order that clerk maintain possession of file pending determination of plaintiffs' motion for reconsideration is HEREBY DENIED.

2. On September 15, 1992 this Court DENIED plaintiffs' motion for reconsideration for two reasons. First, the date transcribed on this Court's Order transferring the case to Texas incorrectly reflected the date the Court rendered its decision to transfer. As stated in its September 15, 1992 Order, the date the transfer decision was rendered was August 24, 1992. Second, defendants have withdrawn their recusal motion. [fn. 1. The issue of whether defendants' renewed motion to recuse was ever properly filed adds support to this Court's Order of September 15, 1992. Defendants point out that the renewed recusal motion was lodged, not filed, due to this Court's Order transferring the action to Texas. Since leave was never granted to defendants to file the recusal motion, the motion was never properly filed. Plaintiffs' attempted "revival" of *defendants'* recusal motion despite the fact that defendants were never granted leave to file the motion, the case was transferred to Texas and *defendants have withdrawn their motion*, is without merit and will not be entertained by this Court.] (underlined emphasis added)

3. Accordingly, there are no issues pending before this Court. The case has properly been transferred to the Northern District of texas.

IT IS SO ORDERED."

(No. 519*)

IV. STATEMENT OF FACTS

A. Summary Of Facts Underlying The Aznarans' Claims

In 1971 and 1972 petitioners Richard N. Aznaran and Vicki J. Aznaran became involved with the Scientology organization [17]/ in Texas. Their involvement was the

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[17] One of the most articulate depictions of the types of personal injury and institutionalized malevolence to be routinely expected from the "Scientology Organization" was rendered in 1984 after a lengthy court trial by the Honorable Paul G. Breckenridge, Jr. of the Los Angeles Superior Court. After hearing Church of Scientology of California v. Gerald Armstrong, L.A.S.C. No. C 420153, the Court summed up Scientology's practical nature as follows:

> "In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect." [footnote omitted] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn.
>
> "In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile."

(continued...)

consequence of a series of fraudulent representations [18]/ causing them to unwittingly place themselves in a circumstance whereupon they were subjected to emotional distress, undue

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[17](...continued)

(No. 125, Ex. F* thereto at 8:7-9:4)

> "After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors."

Id., Appendix to Breckenridge Opinion at 14:22-15:3; aff'd, Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060.

[18] Said misrepresentations included, but were not limited to the following:

As to Richard: Scientology was not a religion and claimed to be so only for tax purposes. Scientology involved "self-help" based upon the application of "scientific principles" developed by L. Ron Hubbard who was a "nuclear physicist," and "Ph.D." who had been "lame, crippled, and twice had been pronounced dead." Hubbard had "healed himself" using this "true science." (No 438* at 2:13-3:18) The result of scientological training would be self-improvement including the elimination of sickness, disease and the increase of mental capacity. (No. 438* at 3:28-4:14)
As To Vicki: The same representations were made to Vicki. (No. 438* 5:4-6:6)

Contrary to said representations, the real purpose of Scientology is to make money based upon the obedience of its members. (No. 438* at 21:15-25.)

Said misrepresentations were the subject of a second motion for summary judgment brought by defendants on November 7, 1990 (No. 323) which was denied in its entirety by the district court's order entered on April 29, 1991. (No. 353)

influence and brainwashing. [19]/

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[19] One of petitions' experts, Margaret Singer has opined that plaintiffs were subjected to the type of conduct she identified as an expert and which was condemned in both Molko v. Holy Spirit Association (1988) 46 Cal.3d 1092, as mod. 47 Cal.3d 470A, cert. denied 109 S.Ct 2110 (1989) and in Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872, pet. for cert. granted, vacated and remanded on other grounds, 111 S.Ct. 1298 (1991); aff'd on remand 4 Cal.App.4th 1074 (1992); review granted S011790 (1992).

At bar, the district court denied (No. 491*) defendants' motion to exclude the testimony of Dr. Singer on the ground that it was not sufficiently accepted to be a proper subject of expert opinion. (No. 388)

In Molko, the California Supreme Court found that:

> "The specific methods of indoctrination vary, but the basic theory is that brainwashing 'is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and [of] the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations and associations. [Citation.]"

Molko, 46 Cal.3d at 1109. In Wollersheim the California Court of Appeal analyzed Scientology's practices of retribution as analogous to medieval torture.

> "To illustrate, centuries ago the inquisition was one of the core religious practices of the Christian religion in Europe. This religious practice involved torture and execution of heretics and miscreants. [Citation.] Yet should any church seek to resurrect the inquisition in this country under a claim of free religious expression, can anyone doubt the constitutional authority of an American government to halt the torture and executions? And can anyone seriously question the right of the victims of our hypothetical modern day inquisition to sue their tormentors for any injuries - physical or psychological

(continued...)

The misrepresentations caused the Aznarans to expose themselves to defendants' undue influence and Scientology's culture of retribution without their knowledge or consent. The lies, brainwashing and sequelae continued on a daily basis throughout their affiliation with the organization - including the six-straight years they spent in Los Angeles - until well after they left it in April 1987. (No. 438* at 7:9-17, 8:18-9:25, 11:14-12:19, 48:27-53:15.)

From 1974 through 1976 Vicki spent one-half of her time at the Scientology base in Los Angeles (No. 438* at 18:23-20:8) to which in 1977 she returned for further subjugation. (No. 438* at 20:9-10.) Scientology directed the Aznarans to live in Florida from 1978 to 1981 where they became members of the management elite, the Sea Organization. (No. 438* at 21:8-24:5.)

From 1981 through 1987 the Aznarans were posted in Los

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[19](...continued)

- they sustained? We do not mean to suggest Scientology's retributive program . . . represented a full-scale modern day 'inquisition.' Nevertheless, there are some parallels in purpose and effect. 'Fair game' like the 'inquisition' targeted 'heretics' who threatened the dogma and institutional integrity of the mother church. One 'proven' to be a 'heretic,' an individual was to be neutralized. In medieval times neutralization often meant incarceration, torture and death. [Citations.] As described in the evidence at this trial the 'fair game' policy neutralized the 'heretic' by stripping this person of his or her economic, political and psychological power." (emphasis added)

Wollersheim, 212 Cal.App.3d at 888.

Angeles where they worked at the direction of defendant ASI. Included in their job description was the wholesale destruction of documents (1) that certain courts had ordered produced in the on-going Wollersheim, Armstrong, and other litigations, and (2) to prevent seizure of financial and management documents by the Internal Revenue Service. (No. 438* at 24:6-25:11, 30:3-31:24, 32:16-19) [20]/

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[20] This is entirely consistent with the judicially reported history of Scientology's avarice and crime. In an exhaustive analysis of the commercial motivation of the Scientology organization, the U.S. Tax Court found that Scientology was largely controlled by a small circle of corrupt individuals whose main, if not only motivation, is to "MAKE MONEY . . . MAKE MONEY . . . MAKE MONEY . . . ." Church of Scientology v. Commissioner of Internal Revenue (1984) 83 T.C. 381, 422, aff'd, 823 F.2d 1310 (9th Cir. 1987).

In a 145-page opinion, culminating in the revocation of Scientology's tax-exempt status under the Internal Revenue Code, Judge Sterrett held that Scientology (1) is "operated for a substantial commercial purpose;" (2) "[Scientology's] net earnings benefit L. Ron Hubbard [and] his family . . ..;" and (3) "[Scientology] has violated well-defined standards of public policy by conspiring to prevent the IRS from assessing and collecting taxes due from [Scientology]." Id. 83 T.C. at 443. The court found that Scientology is essentially a profit-driven enterprise. He stated:

> "Practically everywhere we turn, we find evidence of [Scientology's] commercial purpose. Certainly, if language reflects reality, [Scientology] had a substantial commercial purpose since it described its activities in highly commercial terms, calling parishioners 'customers'; missions, 'franchises'; and churches, 'organizations' -- just to mention a few of the more glaring examples of [Scientology's] commercial vocabulary.
>
> [Scientology] was eager to make money. This was expressed in [a Scientology policy directive dated] March 9, 1972 . . . It sets out the governing policy of

(continued...)

[20](...continued)

> [Scientology's] financial offices by exhorting these offices to 'MAKE MONEY . . . MAKE MONEY . . . MAKE MORE MONEY . . . MAKE OTHER PEOPLE PRODUCE SO AS TO MAKE MONEY.' . . . This is not an isolated policy letter coming back to haunt [Scientology]. The goal of making money permeated virtually all of [Scientology's] activities -- its services, its pricing policies, its dissemination practices and its management decisions." 83 T.C. at 475-76.

Judge Sterrett further found that L. Ron Hubbard and his family had used their control over the Scientology organization for purposes of covert personal enrichment:

> "In the instant case, there can be no question that L. Ron Hubbard and his family are clearly private shareholders [of the Scientology corporation] . . . [T]he obvious indicia of benefit to L. Ron Hubbard and his family include salaries, directors fees, management fees, complete support of the family, and royalties; while covert indicia of benefit include repayment of alleged debts in unspecified amounts and unfettered control over millions of dollars in funds purportedly belonging to [the Scientology organization]."

83 T.C. at 492.

Finally, Judge Sterrett's opinion is suffused with references to Scientology's systematic and methodical violations of criminal and civil law. The opinion initially notes that the trial memorandum filed by the Internal Revenue Service catalogued numerous Scientology policies and procedures which the IRS contended violated public policy. In part, such policies and procedures included:

> "[1] Conspiracy to impede and obstruct the Internal Revenue Service . . .; [2] the infliction of psychic harm including the loss of moral judgment through brainwashing accomplished by auditing and other practices and procedures; [3] the use of blackmail and intimidation to implement [Scientology's] 'fair game' policy; [4] the involuntary dissolution of marriage and family ties through the enforcement of [Scientology's] 'disconnect' policy; [5] involuntary detention and false imprisonment; [6] the making of false statements to immigration authorities . . .; [7] the removal

(continued...)

[20](...continued)

of large amounts of currency from the United States without disclosure; [8] the false registration of [Scientology's] fleet as private yachts used for pleasure when in fact they were used for paramilitary training and commercial activities; and [9] the drastic punishment of staff and members." 83 T.C. at 411-12. (emphasis added)

In an effort to narrow the evidentiary issues before the court, Judge Sterrett primarily focused both the trial and his opinion on Scientology's conspiracy against, and burglary of documents from, the Internal Revenue Service. The Court detailed the conspiracy as follows:

"The conspiracy spanned eight years, beginning in 1969 and continuing at least until July 7, 1977, when the FBI, pursuant to a warrant searched [Scientology's] premises for evidence of the conspiracy and related crimes. The scheme involved manufacturing and falsifying records to present to the IRS, burglarizing IRS offices and stealing Government documents and subverting government processes for unlawful purposes. For example, Freedom of Information Act requests were planned for the purpose of having the IRS amass records in one central place where they would be easier to steal.

* * *

In pursuit of the conspiracy, [Scientology] filed false tax returns, burglarized IRS offices, stole IRS documents, and harassed, delayed, and obstructed IRS agents who tried to audit [Scientology's] records. [Scientology] gave false information to, and concealed relevant information from, the IRS about its corporate structure . . . In the end, Jane Kember, the Guardian Worldwide, acting just under L. Ron and Mary Sue Hubbard in [Scientology's] hierarchy, was convicted of burglarizing the offices of [the IRS'] Exempt Organizations Division on three occasions in 1976. The burglaries occurred while an extensive audit of [Scientology's] records was in progress. Furthermore, Mary Sue Hubbard, Duke Snider and Henning Heldt were convicted of conspiring to obstruct justice. Their convictions in part rested on their efforts to conceal [Scientology's] connection to burglaries of IRS offices and the theft of IRS documents relating to this case. Mary Sue Hubbard was [Scientology's] second highest ranking official. Duke Snider was [Scientology's] president for part of 1975 and 1976. Henning Heldt was [Scientology's]

(continued...)

While in the Los Angeles area, both Aznarans lived in fear of being sentenced to the "Rehabilitation Project Force" ("RPF") [21]/ located at "Happy Valley" in the Southern California desert, or worse, being "declared fair game." [22]/ (No. 438* at

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[20](...continued)

vice-president." Id. 83 T.C. at 505-06.

The Tax Court's revocation of Scientology's tax-exempt status was specifically upheld by the Ninth Circuit Court of Appeals in Church of Scientology v. Commissioner of Internal Review (9th Cir. 1987) 823 F.2d 1310.

[21] Ms. Aznaran describes the RPF as follows:

> "27. Since the early 1970's, Scientology has operated a forced labor camp known as the Rehabilitation Project Force ("RPF"). Staff members are incarcerated in the RPF for various real or imagined offenses. People confined at this camp are forced to perform hard physical labor every day. They eat rice and beans, or left-overs, and wear rags. They are deprived of sufficient sleep. In 1987, I was confined in such a camp at Happy Valley for approximately six weeks. I worked all day and was confined in a room at night. To the best of my knowledge I was guarded 24 hours a day. They would not even let me shower alone. I had to obtain permission to use a bathroom. I was ill and was not allowed to obtain medical treatment. I was not allowed to communicate with my husband nor was I allowed to obtain adequate sleep. I was told that I had gone insane and that my husband did not want to communicate with me. I physically and psychologically abused . . .."

(No. 120, Ex. F* at ¶ 27)

[22] According to the "Fair Game Policy," such persons upon whom it is imposed,

> "[m]ay be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed."

(continued...)

25:12-26:26)

Through its intra-organizational, poly-corporate ruling class, the Sea Organization, [23]/ in 1982 Scientology started to

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[22](...continued)

Allard v. Church of Scientology of California (1976) 58 Cal.App.3d 439, 443, fn. 1; Wollersheim, 212 Cal.App.3d at 880, 888-89, 893-94; Church of Scientology of California v. Armstrong 232 Cal.App.3d 1060 [Gerald Armstrong declared suppressive person, labelled an enemy of the church and subjected to fair game policy]; See also United States v. Kattar (1st Cir.1988) 840 F.2d 118, 125; Van Schaick v. Church of Scientology (U.S.D.C. Mass.1982) 535 F.Supp. 1125, 1131 n.4; Christoffersen v. Church of Scientology (1982) 57 Ore.App. 203, 644 P.2d 577, 590-92; Church of Scientology v. Commissioner of Internal Revenue, supra, 83 T.C. at 411-12.

[23] In the recent Tax Court decision, the court found that the Sea Organization ruled Scientology. It stated:

> "After carefully examining the record and attempting to understand the nominal corporate structure of Scientology it is apparent to the court that it is something of a *deceptis visus*. Real control is exercised less formally, but more tangibly, through an unincorporated association, the Sea Organization, more commonly referred to as the Sea Org . . . [¶] CST staff and officers are required to be members of the Sea Org, which gives CST the distinction of being a Sea Org Church. CSI [and] RTC . . . all high ranking organizations are Sea Org Churches. Being a 'Sea Org Church' means that the church's function is important enough to Scientology to warrant the attention of a significant number of Sea Org members. [¶] Sea Org rank nominally carries with its [sic] no ecclesiastical authority in the sense that Sea Org members still take orders from the ecclesiastical leaders of whichever Scientology organization they join. Upon closer analysis, however, this appear to be a distinction without a difference because in a Sea Org Church the ecclesiastical authority necessarily resides in a Sea Org member." (emphasis added)

Church of Spiritual Technology v. United States, supra, BNA Tax

(continued...)

elevate the Aznarans in the authoritarian hierarchy of its management corporations. Vicki started to work in Los Angeles directly for David Miscavige, then Scientology's second in command (No. 438* at 25:19-20, 26:16-17) and now Scientology's undisputed final authority. Richard started to manage and operate security for the organization's headquarters at Gilman Hot Springs, the RPF Camp at Happy Valley, and Los Angeles where he was instructed to electronically surveil the bedrooms of Scientology staff members. (No. 438* at 26:18-27:25.)

In 1983 David Miscavige threatened to "blow [Vicki's] fucking head off" and sentenced her to the RPF's "running program" at Happy Valley in retaliation for submitting an unfavorable report on his wife. The running program was punishment implemented by running in circles around a Day Glo Orange pole all day, every day, seven days per week from 7:00 a.m. to 9:00 p.m. for three months. The punishment caused Vicki to become suicidal. (No. 438 at 28:6-29:26.) [24]/

After Miscavige released Vicki from Happy Valley, she

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[23](...continued)

Decisions & Rulings (7/8/92) at K-6 to K-7.
See also, Plaintiffs' Memorandum In Opposition To Motion For Summary Judgment for similar conclusions. (No. 334 at pp. 1-30.)

[24] During the years that the Aznarans spent in Los Angeles, they were often prohibited from spending time with one another to hinder their efforts maintain and develop their marriage. (No. 438* at 35:21-37:1.)

was posted as Inspector General of defendant RTC. (No. 438* at 27:27-28, 30:1-2.) From this position of authority Vicki was ordered to engage in, or was aware of, various illegal acts including obstruction of justice, concealing assets, (No. 438* at 25:1-11), assault, false imprisonment, (No. 438* at 26:18-26, 32:20-24), sham sales of Hubbard's book, Dianetics, covering up attempted murder, framing a lawyer for a $2 million theft, surveillance and harassment of "enemies," fraudulent performance of notary services by Miscavige, and the production of false "Sunday Services." (No. 438* at 32:25-35:15.)

In 1987, Miscavige again sentenced Vicki to the RPF at Happy Valley near Gilman Hot Springs in Southern California where she was locked up, forced to perform hard labor with a jackhammer, tormented, berated, constantly surveilled, indoctrinated, and isolated. Her uterus became infected and Miscavige denied her repeated pleas for medical attention despite the fact that for days she continually ran an extremely high fever. (No. 438* at 37:2-40:23.)

Ultimately, the Aznarans left Scientology after being held captive by the organization's leaders at a hotel in Hemet, California where they were threatened, security checked on Scientology's lie detector - the E-Meter, ordered to leave the State of California, and compelled to sign certain releases of

liability [25]/ to all of which they submitted in order to leave Scientology's control without being declared suppressive persons who would be subject to "Fair Game." (No. 438* at 41:10-48:23.)

B. Essential Witnesses Reside In Los Angeles

1. Witnesses On The Issue Of Corporate Control And Liability

In its transfer order the District Court stated "many of the claims raised by Plaintiffs are more than 15 years old and predate the very existence of Defendants." [26]/

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[25] Said releases and waivers are the subject of defendants' answers and counterclaims (Nos. 109*-112*) and defendants' first summary judgment motion (No. 140) and when that failed, a motion for a preliminary injunction (No. 256) the denial of which became the subject of an interlocutory appeal in this Court. See, Notice Of Related Cases, infra. In form and substance, said releases are the same as those signed by witnesses Armstrong, Schomer and Sullivan (See footnote 31 at p. 43) which in light of the District Court's transfer order has made those witnesses unavailable in Texas.

[26] The district court's statement was first made by Scientology in October 1990. "Only four of the named defendants have been served in this action -- RTC, Church of Scientology International (CSI), Church of Spiritual Technology (CST) -- all non-profit religious corporations -- and Author Services, Inc. (ASI). None of these defendants came into existence until 1981 and 1982, and therefore cannot be liable for any of the pre-1981, or pre-1982 acts alleged by the Aznarans." (emphasis added) (No. 323 at 4:1-15) Plaintiffs opposed this position based upon an alter ego theory. (No. 334 at 2:1-32:12) Summary judgment was denied. (No. 353) Defendants raised the issue again in 1991 when they stated:

(continued...)

In order to overcome this defense, plaintiffs require the testimony of former high-ranking Scientology officials who live in the Los Angeles area and who will not testify voluntarily.

One such individual is Laurel Sullivan, a Los Angeles resident. Sullivan will testify about how the entire Scientology Organization was controlled by L. Ron Hubbard and about Mission Corporate Category Sort-Out ("MCCS"), [27]/ the project that

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[26](...continued)

> "Plaintiffs also appear to allege that defendants are somehow responsible for Ms. Aznarans' [sic] decision to divorce Richard Aznaran in 1974 and to marry Dean Stokes soon thereafter. Yet it is undisputed that none of defendants knew of or ratified Stokes' action, and that Stokes was not employed by any of the defendants, none of which even existed at the time." (No. 376 at 38:24-39:1)

In support of their motion to transfer in 1992, defendants again asserted the defense that alleged torts "occurred before defendants were ever incorporated." (No. 508 at 7:22-23)

[27] The MCCS Project gave rise to substantial litigation regarding the crime-fraud exception to the attorney-client privilege. In United States v. Zolin (1989) 109 S.Ct. 2619, the Court addressed whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or tort." Id. at 2630. In Zolin, the Supreme Court reversed the Ninth Circuit's ruling in United States v. Zolin (9th Cir. 1987) 809 F.2d 1411 that the Government had not made a sufficient showing that there had been "illegal advice ... given by [Scientology] attorneys to [Scientology] officials" to invoke the crime-fraud exception to the attorney-client privilege. Upon reversing and remanding, the Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recording

(continued...)

hatched the current constellation of Scientology's corporate entities, including defendants herein. [28]/ She would further testify that the individuals who were on the boards of directors in the Church of Scientology of California, or other Scientology "corporations" whence sprang all defendant corporations herein, did not perform either managerial or corporate functions. The legal branch would prepare board of directors' minutes just for signature. As to major purchases or decisions, they were often directed by Mr. Hubbard. Undated resignations were procured from members of Boards of Directors in advance of their executive

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[27](...continued)

sought by the IRS in a criminal investigation of Scientology to determine whether the crime-fraud exception to the privilege applied. On remand, this Court held:

> "The partial transcripts demonstrate that the purpose of the [Mission Corporate Category Sort Out] project was to cover up past criminal wrongdoing. The MCCS project involved the discussion and planning for future frauds against the IRS, in violation of 18 U.S.C. § 371. [citation.] The figures involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S. Government. The purpose of the crime-fraud exception is to exclude such transactions from the protection of the attorney-client privilege."

United States v. Zolin (9th Cir. 1990) 905 F.2d 1344, 1345. cert. denied, Church of Scientology v. United States (1991) 111 S.Ct. 1309.

[28] See, Church of Spiritual Technology v. United States (U.S. Claims Court, No. 581-88T, June 29, 1992) Bureau of National Affairs Tax Decisions and Rulings (No. 131), July 8, 1992. Therein, the corporate structure of Scientology, including defendants CSI, CST and RTC is described as a *"deceptis visus."* Id. at K-5 to K-7. Its financial structure and objectives, including criminal conspiracies, are discussed at K-9 to K-11.

appointments. (No. 507 at 13:27-14:11, 21:4-7.)

Another such individual is Howard Schomer, also a resident of Los Angeles. Schomer became a member of the Sea Organization in 1970, and from 1975 through 1982, was the Director of Records, Assets and Materiel ("Dir of RAM") for Scientology's operation in Clearwater, Florida. He was responsible for all the financial records of the entire land base; for handling the banking and checking accounts. Schomer would testify that in 1982 he was transferred to Los Angeles where he handled money for L. Ron Hubbard through an entity that developed into ASI. He would testify that ASI was a for-profit corporation, which was supposedly separate from Scientology, but which was operated by Sea Organization members Norman Starkey, Lymon Spurlock, and David Miscavige. Schomer would testify that ASI also controlled Scientology non-profits such as CSI and Scientology Missions International, New Era Publications, anything that was part of the Scientology empire. (No. 507* at 15:19-16:9, 21:4-7)

Gerald Armstrong lives in San Anselmo, California. Armstrong will testify about how the entire Scientology Organization was controlled by L. Ron Hubbard and about the MCCS Project. [29]/ Armstrong will testify concerning the coercive

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[29] Gerald Armstrong is the individual who first brought the MCCS tapes to light. United States v. Zolin (1989) 109 S.Ct.

(continued...)

atmosphere that Fair Game and the RPF create in Scientology, and about Scientology's use of its religious status to commit civil and criminal misdeeds. Armstrong, who worked for L. Ron Hubbard as his researched and archivist, will also testify about the lies that Hubbard disseminated about himself. Such were the lies which caused the Aznarans' to unwittingly place themselves in an atmosphere where they could be brainwashed, become subject to RPF and Fair Game retribution and used. (No. 507* at 14:12-21, 21:4-7)

Sullivan, Schomer and Armstrong [30]/ are hostile

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[29](...continued)

2619, 2623. As noted in footnote 27, p. 38, supra, Zolin arose from an investigation of L. Ron Hubbard, founder of the Church of Scientology, by the Criminal Investigation Division of the Internal Revenue Service ("CID/IRS"). Id. at 2622. In the course of its investigation, the CID/IRS sought access to 49 documents, including two most important tape recordings, that had been filed under seal in Church of Scientology of California v. Armstrong. Id. at 2623.

[30] In contrast to his findings regarding Scientology set out in footnote 17, at pp. 26-27, supra, Judge Breckenridge found Armstrong and his witnesses to be credible and sympathetic. He wrote:

> "As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence . . . In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved [with the highest echelons of power in] the

(continued...)

witnesses by contract, each having signed one of Scientology's settlement agreements that prohibits providing testimony about Scientology unless compelled by subpena service, which they are bound by the same agreements to avoid. (Nos. 446* at 20-21, ¶ 7-H; 514* at 23:1-13.) [31]/

Charles Parselle lives in Los Angeles. Parselle was the lawyer for Scientology who assisted in the development, along with Laurel Sullivan, of MCCS. He would testify on the issue of corporate control as well. (No. 507*, 14:22-24, 21:4-7.)

Peter Gillham, Jr., lives in Los Angeles and would testify regarding the way that Scientology corporations function and how the money was transferred from Scientology corporations to L. Ron

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[30](...continued)

> Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas. Each has manifested a waste and loss or frustration which is incapable of description." (Emphasis added)

(No. 125, Ex. F* thereto at 7:9-26)

[31] Said settlement agreements, designed to neutralize the Armstrong witnesses, provide that each witness:

> ". . . agrees not to testify or otherwise participate in any judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision." (emphasis added)

(No. 446* at 21-22)

Hubbard. His testimony is essential to link up defendant corporate entities and the Scientology power structure manifested through the Sea Organization which controlled and still controls all Scientology corporations. (No. 514* at 24:15-21)

2. Witnesses On The Issues Of Punishment And Retribution

Essential components of the Aznarans' lawsuit are the practices known as the Rehabilitation Project Force [32]/ and the Fair Game policy.

As to the RPF, defendants state that its allegedly benign "purpose . . . is to attempt to rehabilitate or save Sea Organization members who have engaged in actions deemed to be seriously detrimental to the Sea Organization or Scientology . . . [and that] Persons in the RPF perform manual labor and receive spiritual counseling, including auditing and study." (No. 376 at 19:1-10.) In contrast to Scientology's foregoing picture, petitioners' description of the RPF [33]/ is akin to that described in Wollersheim. [34]/ Scientology also appears to deny the existence and plain meaning of the Fair Game policy. (No.

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[32] RPF involves 19-hour days of hard labor and indoctrination that is enforced by the use of force. Wollersheim, supra, 212 Cal.App.3d at 894-95. See also, footnote 21, at p. 34, supra.

[33] See footnote 21, p. 34, supra.

[34] See footnote 32, supra..

218 at 19:17-19.)

Since Scientology chooses to deny the Aznarans' claims regarding RPF and Fair Game, it places their credibility in issue. At least one dozen witnesses who reside in Los Angeles would provide testimony corroborating the Aznarans' testimony regarding RPF and Fair Game. [35]/

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[35] They are:

a. Brian Andrus: He was in the Guardian's Office and was aware of the Scientology-compelled separation between Vicki and Richard in 1985-1987. He also worked in RTC and knew of Vicki's incarceration in the RPF.

b. Ken Rose: He will testify regarding Vicki being sentenced to the RPF as an act of retaliation by David Miscavige.

c. Paul Crabtree: He was in the RPF with Vicki and would testify about the imprisonment therein.

d. Mark Fisher: He worked for David Miscavige and transported Vicki to the RPF in Happy Valley.

e. Ken Lipton: He was in the Sea Organization's Commodore's Messenger Organization and would testify regarding the Aznarans' loss of consortium (separation) in 1985-1987 and about both Vicki and Richard Aznaran being held in the RPF.

f. Diana Reisdorf: She was in charge of the Commodore's Messenger Organization at Los Angeles, Gilman Hot Springs and Happy Valley and would testify regarding the implementation of the Fair Game Policy in the form of dirty tricks that were used to retaliate against people.

g. Mickey Lipton: She was in the Sea Organization's Commodore's Messenger Organization, knew Vicki since 1981 in Scientology and would testify regarding her experiences and observations of her mental state in Scientology.

h. Suzette Hubbard: She was at Gilman Hot Springs and would testify about the RPF at Happy Valley and Vicki being sentenced to the RPF.

i. Mark and Ellen Jones: Each was a Scientologist for many years and would testify regarding the implementation of the Fair Game Policy in the form of dirty tricks that were used to retaliate against people.

j. John Nelson: He was in the Commodore's Messenger Organization and at Gilman Hot Springs and Happy Valley and would

(continued...)

The District Court's transfer order deprives petitioners of the relevant testimony they need to overcome Scientology's defense that defendants did not exist at the time he torts were perpetrated, [36]/ and the defenses denying the outrageous conduct which constitutes the RPF and Fair Game.

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[35](...continued)

testify regarding the implementation of the Fair Game Policy in the form of dirty tricks that were used to retaliate against people. (No. 514* at 24:26-27:18.)

k. Edith Buchelle: She and Vicki worked together frequently in 1981 in both the Guardian's Office (GO) and in its replacement, the Office of Special Affairs, and was aware of Scientology's use of "dirty tricks" in the application of its Fair Game Policy. (Defendants claim to currently employ this witness. [No. 517* at 7:27-28])

l. Heidei Stahli: She was a former ASI executive who also was Vicki's auditor. She would provide testimony regarding the Scientology-compelled separation between Vicki and Richard in 1985-1986. (Defendants claim to currently employ this witness. [No. 517* at 7:27-28])

m. Paul Schroer: He was in the Rehabilitation Project Force (RPF) with Vicki at "Happy Valley" and can testify about the conditions there and her imprisonment therein. He can also testify about the Scientology-compelled separation between the Aznarans in 1985-1987. (Defendants claim to currently employ this witness. [No. 517* at 7:27-28])

n. Greg Wilhere: He was present when Vicki was sentenced to the RPF. (Defendants claim to currently employ this witness. [No. 517* at 7:27-28])

o. Sandy Wilhere: She will testify regarding Vicki being sentenced to the RPF as an act of retaliation by David Miscavige. (Defendants claim to currently employ this witness. [No. 517* at 7:27-28])

p. Kate Conley: She was in the RPF with Vicki and would testify about the imprisonment therein. (Defendants claim to currently employ this witness. [No. 517* at 7:27-28]) (No. 514* at 24:26-27:18.)

[36] See footnote 26, at pp. 38-39, supra, and accompanying text.

LEGAL ARGUMENT

V. THE PETITION FOR A WRIT OF MANDAMUS SHOULD BE GRANTED BECAUSE THE DISTRICT COURT ERRED AS A MATTER OF LAW WHEN IT GRANTED SCIENTOLOGY'S MOTION TO TRANSFER VENUE FROM CALIFORNIA TO TEXAS.

A. Standard Of Review

A writ of mandamus in the federal courts is traditionally available to confine a lower court to the lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. Kerr v. United States Dist. Ct. (1976) 426 U.S. 394, 402; In Re Cement Antitrust Litigation (9th Cir. 1982) 688 F.2d 1297, 1307, n. 7, aff'd 459 U.S. 1191 (1988). In addition to traditional mandamus jurisdiction, this Court has supervisory authority over the District Courts to insure the proper and orderly administration of the federal justice system. Id, 688 F.2d at 1299.

Compliance with the requirements of 28 U.S.C. § 1404 (a) is a question of statutory interpretation. This is a question of law to be reviewed de novo. Wash. Pub. Utilities Group v. U.S. Dist. Court (9th Cir. 1987) 843 F.2d 319, 324; Trustee of Amalgamated Ins. n. Geltman Indus. (9th Cir.) 784 F.2d 926, 929, cert. denied 107 S.Ct. 90 (1986); Native Village of Stevens v. Smith (9th Cir. 1985 770 F.2d 1486, 1487, cert. denied 475 U.S. 1121 (1986). In making the determination whether or not

a case is appropriate for mandamus relief where an error of law is alleged, this Court reviews five factors. In re National Mortgage Equity Corp. (9th Cir. 1987) 821 F.2d 1422, 1425. They are:

1. The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief he or she desires.

2. The petitioner will be damaged or prejudiced in a way not correctable on appeal.

3. The District Court's order is clearly erroneous as a matter of law.

4. The District Court's error is an oft-repeated error, or manifests a persistent disregard for the federal rules.

5. The District Court's order raises new and important problems, or issues of law of first impression.

Bauman v. United States Dist. Court (9th Cir. 1977) 557 F.2d 650, 654-55. The Bauman factors "are to be considered in the aggregate and often require a careful weighing before an appellate court can determine whether a writ should issue." Valley Broadcasting Co. v. United States Dist. Court (9th Cir. 1986) 798 F.2d 1289, 1291-92. Bauman does not require that all the factors be satisfied. Id. at 1292, fn. 3. "The considerations are cumulative and proper disposition will often require a balancing of conflicting indicators." Bauman, 557 F.2d at 655.

Before a writ of mandamus may issue, this Court must be satisfied that the District Court's order is clearly erroneous as a matter of law. "A question of law is 'clearly erroneous' for

the purposes of a mandamus petition if [the Court is] 'left with the definite and firm conviction that a mistake has been committed.'" Cement Antitrust, 688 F.2d at 1305; United States v. Harper (9th Cir. 1984) 729 F.2d 1216, 1222.

B. The Writ Should Issue Because The District Court's Grant Of The Transfer Order Has Worked A Grave Miscarriage Of Justice Which Merits Immediate Relief

1. Petitioners Have No Adequate Remedy On Appeal

A transfer order is not an appealable order. Varsic v. United States District Court (9th Cir. 1979) 607 F.2d 245, 251. It is judicially recognized that improper orders of transfer are generally not correctable on appeal because the prejudice that results from an erroneous transfer order can't be corrected after the fact. Varsic, 607 F.2d at 252. Abuses in the handling of § 1404 (a) cause great inconvenience and expense to the litigants. They are almost impossible to correct by review after trial. Kasey v. Molybdenum Corporation of America (9th Cir. 1969) 408 F.2d 16, 20; Ford Motor Co. v. Ryan (2d Cir.) 182 F.2d 329, 330, cert. denied 340 U.S. 851 (1950); A. Olinick & Sons v. Dempster Brothers, Inc. (2d Cir. 1966) 365 F.2d 439, 444.

2. Petitioners Will Suffer Prejudice Not Correctable On Appeal.

In the case at bar, the District Court issued the transfer order almost one year after discovery had closed and in spite of the fact that petitioners had advised the court that they would not be able to prove their case in the event that the court transferred the case to Texas. The Aznarans advised the District Court that in reliance on their chosen venue they had not taken the depositions of key witnesses who live in the Los Angeles area and who had already testified adverse to Scientology in previous judicial proceedings. [37]/ (No. 507* at 13:10-17:15; No. 514* at 1:5-2:17, 9:1-13:12)

In addition, petitioners advised the District Court that the expense required - for petitioners' counsel, both of whom are sole practitioners, and for petitioners' witnesses, to commute from California to Texas to try the case - would have the effect of depriving petitioners of the counsel of their choice. (No. 507* at 10:6-14; No. 514* at 13:14-15:11)

The District Court failed to address both arguments when it ruled on Scientology's transfer motion and petitioners' motion for reconsideration. (Nos. 512*, 518*)

Bauman instructs us to ask "How severe will damage to the petitioner be if extraordinary relief is withheld?" 557 F.2d

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[37] See footnote 30, at pp. 42-43, supra.

at 655. The damage to petitioners is most severe and the prejudice is extreme. The functional equivalent of a dismissal, the transfer order also acts to disqualify petitioners' counsel due to the expense of litigating a major case in another state, and effectively recused the District Court without the embarrassment of a finding of judicial bias or appearance of impropriety.

3. The District Court's Order Of Transfer Was Erroneous As A Matter Of Law

a. Since The Transfer Order Issued In Disregard Of The District Court's General Order No. 224 Requiring That A Court Which Is The Subject Of A Pending Motion To Recuse Take No Further Action, The Making Of The Order Constituted A Usurpation Of Power.

When the District Court issued the order of transfer, it did so in violation of its own general order requiring that during the pendency of a motion to recuse, the subject court take no action until another judge has ruled on the sufficiency of the motion. In this case, Judge Ideman not only disregarded the Central District's General Order No. 224, but when his error was called to his attention, he improperly employed Federal Rule of Civil Procedure Rule 60 (a) to attempt to change the date of entry of his order to a date prior to that when he had, in fact, signed it.

Local Rule 31.1 of the United States District Court, Central District of California, mandates the application of the Local Rules and General Orders to civil proceedings. Local Rule 31.7 requires that the Clerk of the Central District maintain a file of General Orders of the Court which shall be open for inspection. United States District Court, Central District of California, General Order No. 224 states in pertinent part as follows:

> "5.0 MOTION TO DISQUALIFY A JUDGE
>
> If a motion is made to disqualify a judge pursuant to 28 USC §§ 144 or 455 in any civil case assigned to the judge pursuant to this General Order, the motion shall be referred to the Clerk for assignment to another judge in the same manner as cases are assigned pursuant to this General Order. The judge to whom the motion is assigned shall promptly determine whether the motion is timely filed and is legally sufficient to require a hearing on the disqualification.
>
> . . . <u>The judge against whom the motion has been filed shall not proceed with the case until the motion has been heard and determined.</u> . . ." (emphasis added.)

(<u>Addendum</u>)

In the case at bar this means that, as of August 25, 1992 when defendants filed their motion to recuse (No. 511*), the Court was immediately divested of jurisdiction to take any action in the case beyond those acts needed to deal with that motion. In other words, the Court did not have the power to sign and enter the subject order of transfer. This loss of power was no less significant by virtue of the fact that the subject third motion

to recuse was made pursuant to 28 U.S.C. § 455 and not 28 U.S.C. § 144, as were the first two motions to recuse. [38]/

Whether made under section 144 or section 455, motions to recuse in the Central District are treated identically as to both substance and procedure. Substantively, they are treated the same because, under law, they use similar language and are intended to cover the same area of conduct. In short, they are construed in pari materia. ("upon the same matter or subject.") [39]/ United States v. Carignan (9th Cir. 1979) 600 F.2d 762, 764; United States v. Olander (9th Cir. 1978) 584 F.2d 876, 882; United States v. Conforte (D.Nev.1978) 457 F.Supp. 641, 660, aff'd, 624 F.2d 869 (9th Cir.), cert. denied, 449 U.S. 1012 (1980); In Re Corrugated Container Antitrust Litigation (5th Cir.) 614 F.2d 958, 965, cert. denied 499 U.S. 888 (1980); United States v. Kelly (1st Cir. 1983) 712 F.2d 884, 889; United States v. Gigax (10th Cir. 1979) 605 F.2d 507, 512 (both sections to be considered together).

That General Order No. 224 treats both sections the same has been noted by the Honorable W.W. Schwarzer in Federal Civil Procedure Before Trial (1991, The Rutter Group),

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[38] The third motion to recuse was obviously made under section 455 because a party may only file one motion to recuse under section 144. 28 U.S.C. § 144.

[39] The definition of "in pari materia" is: "Upon the same matter or subject. Statutes in pari materia are to be construed together." H.C. Black, Black's Law Dictionary (4th Ed. 1968), at 898.

§ 16:181.1, p. 16-36.6,

> "*All* motions to disqualify (under §144 or §455) are randomly assigned to another judge *immediately* on their being filed. The challenged judge does *not* determine the legal sufficiency of the affidavit and cannot proceed further in the case until the motion is determined." (Emphasis added.) [40]

In short, the Central District has adopted the rule of § 144 for motions, such as at bar, which are made under § 455. The rule § 144, requires that a judge before whom is pending a motion to recuse "shall proceed no further therein, but another judge shall be assigned to hear such proceeding." Thus, when a motion to recuse is filed, "the judge must cease to act in the case and proceed to determine the legal sufficiency of the affidavit." Bell v. Chandler (10th Cir. 1978) 569 F.2d 556, 559. Such motion directly affects "the power of the judge against whom it was directed to proceed further with the case." Carroll v. Zerbst (10th Cir. 1935) 76 F.2d 961, 962; Daily Mirror, Inc. v. New York News, Inc. (2d Cir. 1976) 553 F.2d 53, 56 (court must "suspend further proceedings" until recusal motion is determined). Any acts taken by the challenged Judge, such as the

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[40] See also, Schwarzer at § 16:206.1 at p. 16-36.11 ["Under a General Order in the Central District, any motion to disqualify is assigned *immediately* to another judge selected by random draw. The challenged judge may not proceed further until the motion is determined."] and at § 16:223 at p. 16-38. ["A different procedure is followed in the Central District of California. By General Order, the entire motion, including its legal sufficiency, is referred to another judge selected by random draw."]

subject order of transfer are, thereof, are acts in excess of the court's jurisdiction and should be set aside.

(1) In Order To Avoid Its Lack Of Compliance With Its Own General Order, The Court Cannot Change The Date Of The Transfer Order, Ex Post Facto

Federal Rule of Civil Procedure 79 (a) requires the clerk to enter chronologically the dates of all papers, including orders, filed with him, showing for each order it substance and the date of its entry. Said requirements further the policy that judicially significant dates be "fixed and unarguable." Clements v. Florida East Coast R.R.Co. (5th Cir. 1973) 473 F.2d 668, 670. Orders do not become final until they are docketed. The reasons for respecting finality of judgments do not apply to un-docketed orders which cannot be enforced. In re American Precision Vibrator Company (5th Cir. 1989) 863 F.2d 428, 429.

The chronological record provided in Judge Ideman's own handwriting and by the Court Clerk's procedures, which are required by Federal Rule of Civil Procedure 79 (a), is crystal clear.

Judge Ideman personally signed [41]/ the transfer order on August 26, 1992, the day after defendants' filed their second

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[41] Compare, Judge Ideman's signature on the transfer order (No. 512*) and his signature on the final page of General Order No. 224-F. (Addendum)

motion to recuse him. Said order was then filed on August 27, and entered on August 28.

On September 11, 1992, plaintiffs filed their motion for reconsideration of the transfer order wherein they pointed out to Judge Ideman that he had no jurisdiction to have acted on August 26, and thereafter, because there was a motion to recuse that was pending. (No. 514 at 3:3-5:23) Apparently in response to the merit of plaintiffs' reconsideration motion, defendants sought to withdraw their motion to recuse on September 14, 1992 claiming it moot in light of the order of transfer. [42]/ (No.

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[42] Despite the fact that the recusal motion had been filed (see entry No. 516 in Clerk's Docket Sheet) in footnote 1 of the defendants' withdrawal of the recusal motion, they attempted to argue that said filing was "improper." (No. 516*) Scientology stated:

> "PLEASE TAKE NOTICE that Defendants' renewed Motion to Recuse the Honorable James M. Ideman, previously filed in this case without leave of Court, [fn. 1: The motion was sent to the Court accompanied by an ex parte application for leave to file the motion out of time. The ex parte application was returned to defendant by the clerk, after defendants received the Court's Order of August 28, 1992. Defendants thus were never granted leave to file the motion at all, and considered it lodged but not filed. This notice formally confirms that defendants no longer intend their motion to be heard or considered.] is withdrawn as moot. The case had been transferred to the Northern District of Texas." Ibid. (emphasis added)

Scientology's contention that the recusal motion was sent to the district court "accompanied by an ex parte application .. .", set forth in its footnote 1, above, is false and deliberately intended to be misleading. The reason it is misleading is because Scientology did not file any ex parte application on August 25 when it filed its motion to recuse. Scientology did

(continued...)

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When on September 15, 1992, the District Court filed its Order Denying Motion For Reconsideration Of Order Granting Motion For Change Of Venue To Northern District Of Texas, the court based the order on defendants' withdrawal of the motion to recuse [43]/ and on alleged "clerical inadvertence" which it used to backdate the entry of the order to a date before the date which the District Court in its own hand signed on said order. (No. 518* at 1:16-23)

On September 17, 1992, even though it had already denied plaintiffs' motion for reconsideration, the District Court made a further effort to legitimize its illegally issued transfer

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[42](...continued)

not submit said ex parte application until August 28, 1992, three days after it had filed its motion to recuse. (See, Clerk's Civil Docket Sheet Entry No. 513 which states "Ntc of doc discrep & ORD: That ex parte application for relief lodged on 8/28/92 is not to be fld, but instead rejected, & rtnd to cnsl. No separate blue backed ord." (See also Ex. F) Therefore, Scientology's claim that its motion to recuse Judge Ideman was "lodged but not filed" is false. While such duplicity is to be expected in Scientology litigation (see footnote 5, at pp. 8-9, supra), petitioners' find the district court's adoption of such duplicity particularly disturbing.

[43] This Court must particularly note the reciprocal bootstrapping between Scientology and Judge Ideman designed to overcome the fact that the district court was divested of jurisdiction - by Scientology's filing of its recusal motion - when it issued the transfer order. After petitioners moved for reconsideration, Scientology based its withdrawal of its recusal motion on the grounds that the issuance of the transfer order rendered the recusal motion moot. (No. 516* at 1:22-2:1) Judge Ideman based his order denying reconsideration on Scientology's withdrawal of its motion to recuse him. (No. 518* at 1:25-2:6)

order and in its footnote 1 to said order adopted Scientology's spurious contention the recusal motion had been "improperly filed." [44]

These are not the circumstances which are appropriate for the application of Federal Rule of Civil Procedure 60 (a) in order to correct an order so that the complete truth can be told in the District Court's record. These are circumstances wherein the District Court has attempted to use Rule 60 (a) to cover up an error, and, in consequence, make petitioners pay the price of prejudice. Rule 60 (a) should not be used as a mechanism for a

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[44] Said order stated:

"IT IS HEREBY ORDERED

1. Plaintiffs' ex parte application for court order that clerk maintain possession of file pending determination of plaintiffs' motion for reconsideration is HEREBY DENIED.

2. On September 15, 1992 this Court DENIED plaintiffs' motion for reconsideration for two reasons. First, the date transcribed on this Court's Order transferring the case to Texas incorrectly reflected the date the Court rendered its decision to transfer. As stated in the September 15, 1992 Order, the date the transfer decision was rendered was August 24, 1992. Second, defendants have withdrawn their renewed recusal motion. [fn. 1. The issue of whether defendants' renewed motion to recuse was ever properly filed adds support to this Court's Order of September 15, 1992. Defendants point out that the renewed recusal motion was lodged, not filed, due to this Court's Order transferring the action to Texas. Since leave was never granted to defendants to file the recusal motion, the motion was never properly filed. Plaintiffs' attempted 'revival' of defendants' recusal motion despite the fact that defendants were never granted leave to file the motion, the case was transferred to Texas and defendants have withdrawn their motion, is without merit and will not be entertained by this Court.]" (original emphasis) (No. 519*)

District Judge to attempt to cure orders made in excess of his jurisdiction.

Federal Rule of Civil Procedure 60 (a)

> is concerned primarily with mistakes which do not really attack the party's fundamental right to the judgment at the time it was entered. It permits the correction of irregularities which becloud but do not impugn it. To that end 60 (a) permits, inter alia, reasonable additions to the record.

United States v. Stuart (3rd Cir. 1968) 392 F.2d 60, 62. Rule 60 (a) applies where the record makes it apparent that the court intended one thing but merely by clerical mistake or oversight did another. "Such a mistake must not be one of judgment or even of misidentification, but merely of recitation, of the sort that a clerk or amanuensis might commit, mechanical in nature." Dura-Wood Treating Co. v. Century Forest Industries (5th Cir. 1982) 694 F.2d 112, 114.

A judge may use Federal Rule of Civil Procedure 60 (a) "to make an order reflect the actual intentions of the court, plus necessary implications." Jones & Guerrero Co. v. Sealift Pacific (9th Cir.1981) 650 F.2d 1072, 1074. Errors correctable under Rule 60 (a) include those where what is spoken, written or recorded is not what the court intended to speak, write or record. Waggoner v. R. McGray, Inc. (9th Cir. 1984) 743 F.2d 643, 644. A court may correct errors of this type even when not committed by the clerk; "it matters not whether the magistrate

committed it - as by mistakenly drafting his own judgment - or whether his clerk did so . . .." Dura-Wood, 694 F.2d at 114. The Court of Appeal can rely on the District Court's own subsequent statements of his intent in granting relief under Rule 60 (a). In re Jee (9th Cir. 1986) 799 F.2d 532, 535.

Rule 60 (a), however, "may not be used to change something which has been deliberately done" and whether or not an order was deliberate should be gleaned from the record as a whole. Security Mutual Casualty Company v. Century Casualty Company (10th Cir. 1980) 621 F.2d 1062, 1065. "[U]nless the purpose for which the rule was enacted can be achieved, it should not be employed." Edwards v. Velvac, Inc. (E.D.Wis. 1956) 19 F.R.D. 504, 507. Thus, where the intention of the court is "evident" or "apparent" no grounds exist for Rule 60 (a) amendment. Id. at 506. If clerical error is not shown, "it change[s] nothing to call deliberate action accurately reflected in the record a clerical error for the purpose of attempting to invoke Rule 60." Ferraro v. Arthur M. Rosenberg Co. (2nd Cir. 1946) 156 F.2d 212, 214.

Since Rule 60 (a) "is limited to correcting errors arising from oversight or omission' [it] cannot be used to correct more substantial errors, such as errors of law" Waggoner, 743 F.2d at 644, because to allow the alleged correction of errors of law at any time through Rule 60 (a) "would significantly weaken the policy of finality as embodied in

the Federal Rules." Warner, II v. City of Bay St. Louis. (5th Cir. 1976) 526 F.2d 1211, 1212. Thus, an error regarding the legal effect of an order is an error of law and "well beyond the purview of Rule 60 (a)." Lee v. Joseph E. Seagram & Sons, Inc. (2nd Cir. 1979) 592 F.2d 39, 41; In re American Precision Vibrator Company, supra, 863 F.2d at 430 ("Clerical mistake . . . does not encompass errors that involve judgment or discretion, especially when altering the error affects the substance of the judgment."); United States v. Kaye (9th Cir. 1984) 739 F.2d 488, 490 (Rule 60 (a) is limited to "errors of no more than clerical significance.") Such errors can be corrected only through resort to Federal Rule of Civil Procedure 60 (b). Waggoner, 743 F.2d at 645.

Judge Ideman improperly invoked Rule 60 (a) when he sought to change the date of entry of his transfer order so as to avoid petitioners' well-taken point that, due to the pending recusal motion, he had been without jurisdiction to order the transfer of the case to Texas. In an effort to support his improper action, both the District Court and Scientology have joined together in an attempt to obfuscate the record below. The Clerk's Docket Sheet is clear that Scientology filed its motion to recuse the District Court on August 25, 1992 (No. 511*), the day after the court filed its order denying interlocutory appellate certification. (No. 510*) When it sought to withdraw the recusal motion on September 14, 1992 (No. 516*), Scientology

recognized that its recusal motion had been "previously filed in this case" (No. 516* at 1:22) but coyly stated that it was "never granted leave to file the motion at all, and considered it lodged but not filed." (No. 516 at 1:27-28) Contrary to the plainly clear chronology of entries set forth in the Clerk's Docket Sheet, Judge Ideman then adopted Scientology's false characterization of the timing of the filing of its motion to recuse [45]/ and stated that "the motion [to recuse] was never properly filed" (No. 519* at 2:21-24) because an ex parte application submitted on August 28, 1993 (Ex. F) had been returned by the Clerk to Scientology on September 1, 1992. (No. 513*) [46]/

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[45] Compare, footnote 42 at pp. 56-57 (Scientology's notice of withdrawal of recusal motion), and footnote 44 at p. 58 (District Court's order incorporating said withdrawal), supra.

[46] Both Scientology and Judge Ideman base their argument on the claim that the motion to recuse was never "properly filed" because ex parte permission for such filing was never obtained. Presumably, defendants and the district court rely on the court's July 24, 1991 order cutting off motion practice. (No. 387) Neither Scientology nor Judge Ideman took this position when Scientology first moved for his disqualification, without any ex parte request, on September 5, 1991 (within 6 weeks after the court cut-off motion practice). (No. 450) Indeed, the first time that Scientology sought Judge Ideman's disqualification did not result in Judge Ideman attempting to save plaintiffs' October 15, 1991 trial date by issuing an order stating that the recusal motion was "not properly filed" because Scientology had not requested, and he had not granted, permission therefor. In fact, and in marked contrast to the actions of the district court which are the subject of this petition, the very next day Judge Ideman not issue any type of order aside from that which he was judicially compelled to do: refer the recusal motion to another judge for determination. (No. 453)

Under the circumstances, such withdrawal, and the court's adoption thereof, is "playing fast and loose" with the judicial process by changing "position in successive stages of the litigation" 1B Moore, Federal Practice, ¶ 0.405(8) at 240, and should be the subject of judicial estoppel. Garcia v. Andrus (9th Cir. 1982) 692 F.2d 89, 94; Matek v. Murat (C.D.Cal. 1986) 638 F.Supp. 775, 783.

In In re D'Arcy (1944) 142 F.2d 313, on June 18, 1943 the court filed an unsigned "Memorandum" which appeared to have been its opinion in the review of a bankruptcy matter before it wherein it stated "The order of discharge is affirmed." The clerk entered the paper in his docket under the date of filing. Thereafter, on February 10, 1944 the court entered an order stating that the petition for review of the Referee granting the Bankrupt his discharge "be and the same hereby is dismissed as of June 18, 1943." On February 19, 1944 appellant appealed. Although D'Arcy is a case decided under Rules 58 and 79 (a), the principle stated therein applies here. In D'Arcy, the Court of Appeal stated "it is clear that the attempt of the court to date the order back to the time of the filing of its opinion was wholly ineffective to deprive appellant of its right of appeal." Id., 142 F.2d at 315. Likewise, in the case at bar, just as the D'Arcy District Court could not manipulate the date an order was entered to deprive a party of the right to appeal, the District Court below cannot manipulate a date to confer jurisdiction on

itself when it did not have any in the first place.

In Matter of American Precision Vibrator Co., supra, the Court of Appeal reversed the District Court's denial of a Rule 60 (a) motion and dismissal based upon a clerk's failure to calendar an opposition because the District Court would "presumably follow Local Rules . . . forbidding the granting of opposed motions without a hearing." Id., 863 F.2d at 431. Likewise, in the case at bar Judge Ideman's transfer order should, at a minimum be vacated, because he should follow the Local Rules, General Order No. 224 of the Central District, and the requisites of § 1404 (a).

Judge Ideman cannot simply invoke Rule 60 (a) in order to sanitize an order which was invalid ab initio.

b. The District Court Either Disregarded Or Misconstrued Petitioners' Arguments Which Explained Why Transfer Of Their Case To Texas Was Not Appropriate.

When a District Court fails to give due consideration to the factors relevant to a motion for a change of venue under § 1404 (a), it commits "clear error." Northern Acceptance Trust 1065 v. Gray (9th Cir. 1970) 423 F.2d 653, 654; Pacific Car & Foundry Company v. Pence (9th Cir. 1968) 403 F.2d 949, 955. As will be discussed below, the District Court completely ignored petitioners' arguments as why the transfer was not authorized by

§ 1404 (a).

(1) The District Court Incorrectly Found That Many Of Petitioners' Claims Were Not Perpetrated In California And Ignored Petitioners' Request To Reconsider That It Had Made A Mistake Because Most Claims Are Grounded In California.

Even if a plaintiff is not litigating on his "home turf," the importance of his choice of forum is not diminished if the forum is "at the site of the activities at issue in the lawsuit." Sports Eye, Inc. v. Daily Racing Form, Inc. (D.Del. 1983) 565 F.Supp. 634, 637.

Vicki J. Aznaran and Richard N. Aznaran are the plaintiffs below, and thus have the burden of proof to establish their tort claims. In light of the legal requirement that they discharge said burden, and because all of their witnesses were located in California, primarily in Los Angeles, the Aznarans chose venue in the United States District Court, Central District of California. (No. 514* at 23:1-27:23)

The District Court was flatly incorrect when it found "First, many of the claims Plaintiffs make do not have their basis in facts alleged to have occurred in California; indeed, it appears that many of the claims arose in Texas." (No. 512* at 4:18-21.) It is true that the Aznarans first became involved

with Scientology in Texas in 1971-72 (No 438* at 2-6). [47]/ In 1974, however, Scientology brought Vicki Aznaran to Los Angeles where she was subjected to further, continuing and on-going fraud, intentional infliction of emotional distress and coercive persuasion, in consequence of which she and Richard were deprived of marital consortium. (No. 438* at 18:14-19:26.) From 1981 through 1987, Scientology continuously posted the Aznarans in the Southern California area where they were subjected to constant mistreatment [48]/, including ongoing fraud, intentional infliction of emotional distress, loss of consortium, denial of minimum wages, invasion of privacy, and false imprisonment, until they escaped from Scientology. (No. 438* at 24:6-53:23.)

Therefore, in this case as in Sport's Eye, "it is clear from the record that the site of the defendants' alleged wrongful

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[47] The Aznarans were deceived into becoming involved with Scientology and unwittingly subjecting themselves to undue influence and coercive persuasion. This continued throughout their affiliation with defendants. (See, No. 438* at 2:9-12:11; 50-53; footnote 18 at p. 28, and footnote 19 at pp. 29-30, and accompanying text, supra)

[48] Some of the most egregious acts of abuse transpired in Southern California. For example, in February 1983, after threatening to "blow your fucking head off," David Miscavige sentenced Vicki to the "Running Program" in "Happy Valley" where for 14 hours a day for three months she was compelled to run around a telephone pole in the desert, in the rain and under the scorching sun. She became suicidal. (No. 438* at 28:6-29:21.) Again, in March 1987, Miscavige sentenced Vicki to Happy Valley where she was locked up and guarded for one month. While so incarcerated and mistreated, her uterus became infected and she was denied medical attention and the right to contact Richard, her husband. (No. 438* at 37:2-40:23.)

conduct was California. Consequently, this litigation has its 'center of gravity' in California." Sports Eye, 565 F.Supp. at 638. The plaintiffs' "choice of forum . . . is entitled to great weight" National Mortgage Network, Inc. v. Home Equity Centers, Inc. (E.D.Pa. 1988) 683 F.Supp. 116, 119, and the District Court was incorrect to disregard plaintiffs' choice of forum and make the erroneous finding that most of the claims have no factual basis in California. The record clearly shows the contrary to be true.

(2) The District Court Ignored Petitioners' Argument That To Order The Case Transferred To Texas Was Tantamount To Dismissal Because Such Grant Deprived Them Of Testimony Of Witnesses Required To Sustain Their Burden Of Proof.

In its opinions ordering transfer (No. 512*) and denying reconsideration (No. 518*), the District Court failed to address petitioners' argument that transfer of their case would destroy their ability to prosecute their case because it would place essential witnesses, such as Sullivan, Schomer, Parselle and Armstrong, beyond the subpena power of the court. [49]/

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[49] In their opposition to the transfer motion petitioners argued: "One of the paramount issues in this case is that of corporate control and how it is implemented by members of the Sea Organization in total disregard of any differences between corporate entities. Other than plaintiffs, there are no witnesses in the State of Texas who can testify about who

(continued...)

The Aznarans filed their action in Los Angeles because that venue was where they would have the best opportunity to successfully prosecute their claims. Since Vicki was the former President of defendant Sea Organization corporation RTC and Richard was the former Chief of Security, Worldwide, for Scientology, they were both aware that Scientology has a policy whereby its members are not to cooperate in litigation or appear as witnesses. They were both aware of former high-ranking Scientologists such as Howard Schomer, Laurel Sullivan, Gerald Armstrong, and others - having been bought off and having signed settlement agreements not to testify in the absence of compulsion and to avoid service of process - would be unavailable to testify at trial in any jurisdiction outside of California. (No. 514* at 21:6-16, 23:6-24:9) [50]/

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[49](...continued)

controlled the Scientology organization during the period when the Aznarans were members. Los Angeles is loaded with them. Many of the same witnesses will also be able to testify about defendants' mistreatment of the Aznarans and the atmosphere of coercion generated by that organization's policies such as Fair Game and practices such as the RPF. (No. 507* at 13:15-25.)

In their motion for reconsideration petitioners called the district court's attention to the fact that they could not prove their case without these witnesses. (No. 514* at 9:1-13:12)

[50] An example of said agreement not only is in the record below (see, Declaration of Gerald Armstrong Regarding Alleged "Taint" Of Joseph A. Yanny, Esquire, filed herein on September 4, 1991, at No. 446* at p. 20-21), but also was the subject of Scientology's interlocutory appeal in this Court in Case No. 90-55288. See Notice of Related Cases, supra.

(continued...)

As part of Richard's security post in the Scientology organization, he was required to instruct Scientologists how to avoid service of process, and was responsible for preventing process servers from gaining access to Scientology compounds and for the monitoring of former Scientology staff members who could provide damaging testimony in litigation against the organization. [51]/ (No. 514* 21:1-24:9)

Based upon the Aznarans' knowledge of the manner in which Scientology operates, they chose Los Angeles as the most appropriate forum in which to prosecute their case. [52]/ The Court's transfer order deprives them of the critical benefits to which they are entitled by litigating their claims in the Central

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[50](...continued)

Indeed pursuant to its efforts to neutralize Armstrong, in Church of Scientology International v. Gerald Armstrong, Los Angeles Superior Court, Case No. BC 052395, CSI, defendant herein, is presently suing Armstrong for breach of contract and injunctive relief for having executed the above referenced declaration in the case at bar. It has obtained a preliminary injunction which prohibits Armstrong from voluntarily providing testimony in the Aznarans' behalf in litigation against Scientology. (No. 517* at Ex. G)

[51] In order to attempt to prevent individuals knowledgeable about Scientology from testifying in litigation, part of Richard's job was to monitor their activities. Those individuals included, but were not limited to Howard Schomer, Gerald Armstrong, Peter Gillham, Jr., Jeff Shervell, John Nelson, David Mayo and Diana Reisdorf. (No. 514* at 21:13-20)

[52] It is also the corporate headquarters of each of the defendants. The corporate headquarters for defendants RTC, CSI, CST and ASI are located in Hollywood, California. (No. 514* at Declaration of Ford Greene, Exs. 1, 2 & 3)

District.

> "The plaintiff has made his choice of action in this forum. The Act [28 U.S.C. § 1404 (a)] was not intended to defeat the plaintiff in the right of bringing his action in such forum as he deemed proper to prosecute an action for such remedy as he may have under the circumstances, and wherever possible, consideration ought to be given to the choice of the plaintiff's forum."

Walter v. Walter (W.D.Pa. 1964) 235 F.Supp. 146, 147.

Some of those witnesses, including Howard Schomer, [53]/ Laurel Sullivan [54]/ and Vaughn Young, [55]/ refuse to travel to Texas to testify and are not subject to the subpoena power of a Texas court whereas they are subject to compulsory process in the

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[53] Howard Schomer advised plaintiffs' counsel Ford Greene that under no circumstances would he travel to Texas to testify in this case. (No. 514* at 29:6-9)

[54] Sullivan, as well as Schomer and Armstrong, has signed an agreement which requires non-cooperation with litigants adverse to Scientology. (Nos. 507* at 16:7-9, 21:4-7; 514* at 11:18-19, 29:10-18, No. 446* at 11-26; footnote 31, at pp. 43, supra.)

[55] On or about August 10, 1992, one week after the Aznarans filed their opposition to defendants' motion to transfer, Vaughn Young telephoned Vicki Aznaran and told her that Scientologist defense attorney Kendrick Moxon had telephoned him and in a threatening tone demanded "What do you think you are doing?" in allowing himself to be listed as a plaintiffs' witness. Then, Young told Vicki that he could not travel to Texas to testify on her behalf. Vaughn Young is a former member of the Guardian's Office. Vaughn Young can testify as to the practices employed at the Happy Valley RPF incarceration camp, the practices of the Fair Game Policy, working at defendant ASI with Vicki, and to the loss of consortium that both Aznarans experienced. (No. 514* at 23:19-24:9)

Central District. [56]/ Therefore, the District Court's order transferring the case to Texas has the practical effect of depriving petitioners of their ability to discharge their burden of proof on both their claims and on defendants' defense that defendants did not even exist when the torts alleged herein were perpetrated. [57]/

> "Although the lack of compulsory process is normally not a strong factor unless the potential witness has demonstrated recalcitrance, it would be imprudent to proceed in a forum where *none* of the important witnesses is subject to process. That would unnecessarily risk a major impediment to an effective trial."

Harris Trust and Savings Bank v. SLT Warehouse Company, Inc. (N.D.Illinois 1985) 605 F.Supp. 225, 229.

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[56] See, footnote 31, p. 43, supra.

[57] See footnote 26, at pp. 38-39, supra, and accompanying text for defendants' and the district court's expression of this defense.

From the outset of their lawsuit plaintiffs alleged in their complaint that defendants were "sham corporate structures to evade prosecution generally" (No. 1* at ¶ 16, 7:14-14) all of which "were created as an attempt to avoid payment of taxes, and civil judgments. Due to the unity of personnel, commingling of assets, and commonality of business objectives, the attempt at separation of these corporations should be disregarded by the Court." (No. 1* at ¶ 6, 2:22-128)

In December 1981 Vicki was assigned to work at defendant ASI and commissioned to reorganize the corporate structures of Scientology as well as effect sham sales of L. Ron Hubbard's book Dianetics to the other corporate defendants "as a vehicle for transferring assets among them." (No. 1* at ¶ 16, 7:23-8:1)

As noted, two essential witnesses required to prove these allegations are Laurel Sullivan and Howard Schomer. Each has signed a settlement agreement wherein he has promised not to testify against Scientology unless subpoenaed. (See, No. 507* at 15:19-16:9.) Schomer will not travel to Texas to testify. (No. 514* at 29:6-9) See also footnote 31 at p. 43, supra.

The District Court's transfer order is worse than "a major impediment to an effective trial," it is a de facto dismissal.

(3) The District Court Disregarded Petitioners' Argument That To Grant The Motion Deprived Them Of Their Counsel Of Choice By Making The Cost Of Litigation Prohibitively Expensive.

The District Court failed to address the question of the expense to plaintiffs that was raised in petitioners' opposition to Scientology's transfer motion (No. 507* at 10:6-14) and in Petitioners' motion for reconsideration. (No. 514* at 13:14-15:11)

> "In weighing the convenience of the parties, the court may take into account the financial strength of each. [Citation.] The court may give increased weight to this factor if a financially superior defendant through the actions complained of has contributed to the financial difficulties of a plaintiff."

Galonis v. National Broadcasting Company, Inc. (D.New Hampshire 1980) 498 F.Supp. 789, 793. Thus, courts have found the parties relative ability to undertake a trial in any particular forum to be a proper and important consideration on a § 1404 (a) motion. The Butterick Company, Inc. v. Will (7th Cir. 1963) 316 F.2d 111, 113. A relevant consideration in determining a motion to transfer "is the parties' relative financial ability to undertake a trial in any particular forum," including the cost of counsel's transportation, which is of direct relevance to the

convenience of the parties. Houk v. Kimberly-Clark Corp. (D.C.Mo. 1985) 613 F.Supp. 923, 929-30.

It will cost plaintiffs from $50,000.00 to $80,000.00 to make the witnesses whose cooperation they can obtain available to testify in Texas. (No. 514* at 28:1-28) Moreover, Scientology exploited plaintiffs for 15 years for what was essentially free labor at the pay rate of no more than $17.20 per week. (No. 438* at 23:7-13.) When they were being kept at the hotel in Hemet immediately before their escape from Scientology, the Aznarans possessed $50 between them. (No. 438* at 41:10-42:8.) It was Scientology's 15-year exploitation of the Aznarans which created their lack of financial well-being as well as the necessity of bringing the instant lawsuit.

Indeed, the cost of litigating the case in Texas would bring financial ruin to the Aznarans. (No. 514* at 22:1-8, Declaration of Richard Aznaran) Such a result is unfair to a litigant. Actmedia, Inc. v. Ferrante (S.D.N.Y. 1985) 623 F.Supp. 42, 44.

Additionally, both John Clifton Elstead and Ford Greene are sole practitioners who are not able to be out of their respective offices in California for 3 months while the case is being tried in Texas. Thus the order has the effect of disqualifying the Aznarans' counsel as well.

Scientology, on the other hand, is extremely well financed. For example, defendant CST received from another

Scientology organization a start up grant of $17.95 million in 1983 and receives unrestricted annual grants ranging from $623,000 to $2.8 million from co-defendant RTC. Church of Spiritual Technology v. United States, supra, (U.S. Claims Court, No. 581-88T, June 29, 1992) Bureau of National Affairs Tax Decisions and Rulings (No. 131), July 8, 1992, at K-7. (No. 514* at 43-57, Exhibit 4 to Declaration of Ford Greene.)

When the result of the transfer of the case to Texas is the elimination of the financial resources available to a party, that order is unfair. "Such a denial of the plaintiff's cause of action could not be 'in the interest of justice.'" General Portland Cement Co. v. Perry (7th Cir. 1953) 204 F.2d 316, 320.

(4) The District Court Gave No Weight To Petitioners' Arguments That The Motion To Transfer Was (1) Untimely Because All Of Scientology's Texas Witnesses Were Known To Scientology Since 1988, (2) Brought To Obtain The Backdoor Recusal Of The Trial Court, And (3) Brought For The Purpose Of Delay.

In its § 1404 (a) motion for transfer Scientology claimed

> "investigation and discovery have revealed that trial of this action in the Northern District of Texas would be more convenient to the parties and the witnesses, and because the interests of justice would be better served by trial in Texas than in the Central District of California, defendants request that this Court transfer this case, pursuant to 28 U.S.C. §1404(a), to the Northern

District of Texas."

(No. 499* at 4:13-19) Scientology specified 22 "key witnesses," including plaintiffs, their family and their former employees, whom it claimed were residents of the Northern District of Texas. (No. 499* at 7:28-8:11:19) Of all defendants' "key witnesses" which provided the apparent justification for the District Court's order of transfer of the case to Texas, defendants had taken the depositions only of plaintiffs' parents. (No. 507* at 7:9-12)

With respect to the other witnesses, defendants never deposed them despite the fact that such witnesses could not be subpoenaed to federal court in Los Angeles for trial. (No. 507* at 6:24-7:7) Scientology recognized that "None of the Texas residents may be subpoenaed to appear in California (F.R.Civ.P. Rule 45(b)(2)), and none are employees of defendants. This effectively cuts off the ability of defendants to call these people as witnesses." (No. 499* at 11:22-12:2)

Despite the fact that Scientology had known of the identity of these "key witnesses" since 1989 (No. 507* at 6:23-7:28), it waited until after all its other efforts to disqualify the Aznarans' counsel, to neutralize the Aznarans' case, or to disqualify Judge Ideman had failed before it brought its motion to transfer.

A district court, when ruling on a § 1404 (a) motion must do so "in perspective with the surrounding circumstances,"

Securities and Exchange Com'n v. Savoy Industries (D.C. Cir 1978) 587 F.2d 1149, 1156. The District Court should have taken into consideration defendants' past efforts to disqualify the court in conjunction with the fact that the District Court denied all defendants' "dispositive" motions per its order filed on June 23, 1992 (No. 491*), and then should have directly addressed petitioners' arguments that the motion was both a tactic of delay and a "back door" attempt at disqualification. (No. 507* at 6:1-9:15) The District Court, however, ignored these arguments. (No. 512*)

(5) The District Court Misconstrued The Law Which States That Familiarity With The Litigation And The Law Of The Forum State Weigh Against Transfer.

The court that is most familiar with the controversy should be the court that hears the case. Randall v. J.W. Jenkins (E.D. Pa. 1967) 271 F.Supp. 904, 906. In a diversity case, the court most familiar with the applicable state law is where the case should be tried. Piper Aircraft Co. v. Reyno (1981) 454 U.S. 235, 285. There is no question but that the District Court is the court that is most familiar with this heavily litigated case. [58]/

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[58] Indeed, simply for a new court to review the 65 volume

(continued...)

An important factor to consider is whether there are any similar actions pending in other federal district courts. As a general rule, duplicative litigation should be avoided and "a case should be transferred to a district where a related case is pending." Colorado Water Conservation District v. United States (1976) 424 U.S. 800, 817. Just as the pendency of a similar action in the transferee court is a universally recognized reason for granting a change of venue, a similar action in the transferor court is a reason to deny such change. Continental Grain Co. v. Barge F.B.L. - 585 364 U.S. 19, 26. ("To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy, and money that § 1404 (a) was designed to prevent.") [59]/

In Van Dusen v. Barrack (1964) 376 U.S. 612, 645, the

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[58](...continued)

file in this case would literally take months. Thus, the delay that would be occasioned by the time required for the transferee court "having to prepare itself for this complicated case," Securities and Exchange Com'n, 587 F.2d at 1156, would be excessive.

[59] The district court is familiar with not only the issues in Scientology-related litigation, but also with how such litigation is conducted. At or near the time he issued the transfer order, Judge Ideman was presiding over other Scientology-related litigation which included: Church of Scientology v. United States of America CV-90-2042-JMI, Religious Technology Center v. Robin Scott CV-85-711-JMI; Religious Technology Center v. Larry Wollersheim, et al. CV-85-7197-JMI.

In Van Dusen v. Barrack (1964) 376 U.S. 612, 645, the United States Supreme Court held that in diversity actions the "interests of justice" favor having federal judges who are familiar with the applicable state law try a case. Similarly, in Gulf Oil v. Gilbert (1947) 330 U.S. 501, 509, the Court stated that it is preferable to try a diversity case "in a forum that is at home with the state law that must govern the case."

In this case, tort claims of intentional infliction of emotional distress, fraud, invasion of privacy and false imprisonment are based upon facts that occurred in California and therefore are governed by California law. "Generally speaking, it is preferable for a court of the state whose substantive law controls the action to hear the case, and this is a factor to be considered on a motion for transfer." Sports Eye, 565 F.Supp. at 639.

Based upon the foregoing authorities, petitioners argued below in their opposition to defendants' transfer motion that the court most familiar with the controversy should be the court that hears the case, particularly in a diversity case when the transferror court is most familiar with the applicable state law. (No. 507* at 10:18-11:13.)

In its Order Granting Transfer (No. 512*) the Court misconstrued petitioners' argument. It stated:

> ". . . Plaintiffs' argument that transfer would eliminate the Court most familiar with Scientology-related litigation, in general,

> weighs in favor of transfer rather than against it. Any perceived 'Scientology expertise' relied upon by Plaintiffs in choosing this forum is misguided. The judges of this Court do not, by any means, consider themselves 'Scientology experts.' [60/] In any event, since a trial court should attempt to avoid intimate knowledge about the parties that may color its judgment in a case, this argument only lends force to Defendants' contention that transfer is appropriate."

(No. 512* at 5:8-18)

Judge Ideman's comments are strange because petitioners simply argued that in light of the fact that he had resolved four summary judgment motions, three of which were based entirely on California law, [61]/ he was more familiar with the law applicable to this case than a federal judge in Texas would be.

When petitioners called the foregoing erroneous

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[60] The district court's choice of the terms "Scientology expertise" or "Scientology experts" which it placed in quotes is strange inasmuch as said terms were never used by petitioners and such arguments never made by them.

[61] For the controlling state law on almost all issues in this case which have been argued and ruled on below, see No. 140 (summary judgment on issue of releases and waivers), No. 197 (opposition to summary judgment on issue of releases and waivers), No. 218 (reply in support of summary judgment on issue of releases and waivers), No. 219 (Order denying summary judgment on issue of releases and waivers), No. 323 (summary judgment against all causes of action), No. 334 (opposition to summary judgment on all causes of action), No. 343 (reply in support of summary judgment on all causes of action), No. 353 (Order denying summary judgment on all causes of action), No. 354 (summary judgment on statutes of limitation), No. 439 (opposition to summary judgment on statutes of limitation), No. 428 (reply in support of summary judgment on statutes of limitation), No. 491 (Order denying summary judgment on statutes of limitation).

interpretation to the attention of the District Court in their motion for reconsideration (No. 514* at 17:1-18:15), it completely ignored the matter in its order denying the motion. (No. 518*) [62]/

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[62] Since the district court is familiar with the standards for recusal, its comments regarding its "intimate knowledge" of defendants assumes a stranger light inasmuch as those comments manifest a disregard the well-recognized propriety of judicial opinions which are derived from presiding over litigation. In re Corrugated Antitrust Litigation (5th Cir. 1980) 614 F.2d 958, 965 ("familiarity with defendants and/or the facts of the case that arises from earlier participation in judicial proceedings is not sufficient to disqualify a judge.") Bias or prejudice must arise from "an extrajudicial source and result in an opinion on the merits on some basis other than what the judge has learned from his participation in the case." United States v. Grinnell Corp. (1966) 384 U.S. 563, 583. Thus, "[f]acts learned, opinions formed or adverse rulings made during the course of judicial proceedings do not themselves establish the personal bias or prejudice required for disqualification." United States v. Scaccia (N.D.N.Y. 1981) 514 F.Supp. 1353, 1355. During the hearing on defendants' first motion to recuse Judge Ideman, Judge Letts discussed the impropriety of belated motions to recuse. He said

> ". . . these cases have been before Judge Ideman for a long time, and there is the corresponding consideration that if it is true what the Church of Scientology doesn't like about Judge Ideman is the reaction to the evidence they've put before him, and that's why they want a different judge, the appearance of impropriety to the other people of allowing a change at this late stage is at least as high. [¶] The law is clear that it has to be evidence for bias that pre-exists the case itself, it cannot be things that come out of the case itself. [¶] With a case that's gone on for a long time, there is always reason to ask the question if the real reason, if people want a change of judge, isn't because they have some inkling about what the judge thinks about what he's already seen abut [sic] the case. [¶] That is not an appropriate basis for a recusal."

(Ex. C at pp. 18-19.)

(continued...)

(6) The Court Failed To Properly Balance The Relevant Factors Pursuant To § 1404 (a) When It Granted The Motion To Transfer This Case To Texas.

Of all defendants' "key witnesses" which have provided the apparent justification for the Court's ordering the transfer of the case to Texas, defendants have taken the depositions only of plaintiffs' parents. With respect to the other witnesses, defendants have not deposed them. (No. 507* at 6:24-7:28)

As to the Los Angeles witnesses identified by the Aznarans and discussed infra at 37-45, no depositions have been taken either. Thus, the transfer of the case to Texas has the effect of depriving the Aznarans of the testimony of the Los Angeles witnesses.

Until recently, however, the case has been venued in Los Angeles, not in Texas. Despite this reality, defendants failed to depose the "key witnesses" in Texas. Thus, on the basis of either obtaining, or being deprived of testimony, the

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[62](...continued)

Similarly, the judge cannot remove himself from a case because of what he has learned of the case while it has been in front of him. Following Judge Ideman's logic, any judge sitting on any case in which he heard several substantial motions should either transfer the case or disqualify himself because judges who are less educated about the cases on which they sit are more fair. If Judge Ideman felt that he possessed "intimate knowledge about the parties that may color his judgment in [this] case," he should have recused himself (a motion for which was pending), not sent the case to Texas, destroying petitioners' case as a result.

District Court has given an unfair advantage to defendants, and penalized petitioners with a disadvantage which they could not have foreseen. Indeed, it has irreparably penalized petitioners by depriving them of critical testimony after the close of discovery. Therefore, to transfer the case to Texas more than merely shifts the burden of inconvenience from defendants to petitioners. It prejudices and penalizes petitioners for relying on the venue they had chosen and in which the case has been litigated for 4 and 1/2 years through the close of discovery, the cutting-off of motions and the setting of trial.

It was defendants, knowing the case was venued in California, who failed to obtain the evidence they now say they need. Petitioners could not have had any idea that the District Court would transfer the case they had brought and litigated in California, to Texas. Under those circumstances, petitioners acted prudently in not taking the Los Angeles' witnesses depositions because their testimony had already been preserved in Church of Scientology of California v. Armstrong and other litigation. [63]/

Now, out-of-the-blue, the case has been transferred to Texas after the close of discovery and in a manner which completely sabotages the Aznarans ability to prosecute their claims.

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[63] See, footnote 30, at p. 42-43, supra.

If the transfer would merely shift the burden of inconvenience to the plaintiffs, the transfer should not be allowed. Van Dusen, 376 U.S. at 645-46. Similarly, "Where the balance of convenience is in equipoise, plaintiff's choice of forum will control." Bastille Properties, Inc. v. Hometels of America, Inc. (S.D.N.Y. 1979) 476 F.Supp. 175, 182; Motown Record Corp. v. Mary Jane Girls, Inc. (S.D.N.Y. 1987) 660 F.Supp. 174, 175 (where equities roughly balance, plaintiffs' choice should not be disturbed). Thus, where other factors are equal, the plaintiffs' choice of forum should control and the case should be tried in the district where it was first filed. Gulf Oil, 330 U.S. at 508. In the case below, the equities were not balanced. The equities tipped strongly in the Aznarans' favor. Even though the equities tilted completely in favor of the Aznarans, the District Court transferred the case anyway.

Defendants did not make the "strong showing" required to justify a transfer order and the parties are not in a roughly equal position. Moreover, the public interest is adversely affected by the transfer order because the order rewards defendants for insuring the unavailability of material witnesses by buying them off, threatening them, and suing them in an effort to suppress their knowledgeable and judicially-credited testimony. [64]/

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[64] See footnotes 30, 31, at pp. 42-43, footnote 50 at pp. 68-69, footnotes 53, 54 and 55 at p. 70, supra.

4. The District Court's Orders Manifest A Persistent Disregard Of The Federal Rules And, In Consequence, Raise An Important Problem Of First Impression. Because The District Court Transferred The Case After It Had Cut-Off Discovery, It Sabotaged Petitioners' Ability To Prove Their Case.

The application of the Bauman guidelines result in the question, "How clear is it that the lower court's order is wrong as a matter of law?" Bauman, 557 F.2d at 655. In the case at bar the answer is "quite clear." Moreover, as discussed above, Judge Ideman has manifested a persistent disregard of the federal rules, and, by transferring the case to Texas almost one year after the close of discovery and in the face of petitioners' warning that do so was tantamount to a dismissal of their case, has created a new and important problem. That new and important problem has three components. In one illegal order of transfer, the District Court has (1) effectively dismissed petitioners' case by depriving them of critical witnesses with no opportunity to perpetuate the testimony of said witnesses because discovery has been closed for almost one year when the order issued, (2) effectively disqualified their counsel because California sole practitioners cannot undertake months of trial in Texas, and (3) recused itself at the unfair cost of destroying the Aznarans' case.

Additional reasons justify the issuance of the writ.

First, the District Court issued its order of transfer

in total disregard of the factors mandated in an application of § 1404 (a).

Second, the District Court issued its order of transfer in total disregard of the Central District's prohibition thereof during the pendency of a recusal motion.

Third, on reconsideration of its order of transfer, rather than address the two foregoing failures which petitioners called to its attention, the District Court improperly attempted to use Rule 60 (a) to backdate its transfer order so as to avoid the Central District's prohibition against its courts acting during the pendency of recusal motions.

Fourth, in an attempt to strengthen what the District Court recognized as its weak position it adopted flatly false characterizations of the record offered by Scientology.

And fifth, the District Court and Scientology indulged in reciprocal bootstrapping: Scientology said its recusal motion was moot because the District Court had transferred the case to Texas, and the District Court said its transfer order was legal because Scientology had "withdrawn" its recusal motion.

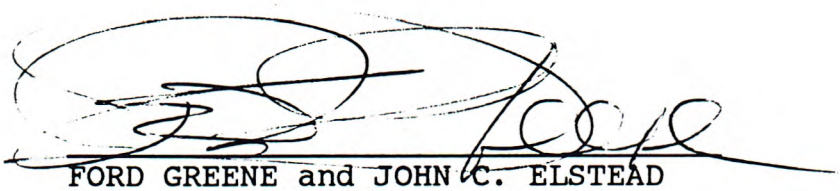
What petitioners find inalterably disturbing about the scenario revealed in the record below is that the jockeying of both Scientology and the District Court have a common goal: the creation of irreparable prejudice to petitioners' ability to discharge their burden of proof, prosecute their claims, and obtain a fair trial. While petitioners do not know the

cause [65]/ for the subject orders of the District Court Judge, petitioners do wonder why Judge Ideman has made them pay the price for his desire, for whatever reason, to effectively recuse himself from their case, disqualify their counsel and ruin their case. Should such recusal be appropriate, it is not fair that it be achieved at the cost of the practical dismissal of the Aznarans' case and the disqualification of their counsel.

CONCLUSION

Based upon the foregoing points and authorities, petitioners Vicki J. Aznaran and Richard N. Aznaran respectfully submit that an extraordinary writ of mandamus should issue reversing the order of the District Court that the case below be transferred from the Central District of California to the Northern District of Texas.

DATED: October 13, 1992



FORD GREENE and JOHN C. ELSTEAD
Attorneys for Plaintiffs
VICKI J. AZNARAN and RICHARD N. AZNARAN

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[65] Indeed, petitioners can only speculate, based on their knowledge of Scientology's litigation tactics, of some improper pressure that Scientology may have brought to bear on the District Court Judge. See, footnote 5, at pp. 8-9, supra.

VI. STATEMENT OF RELATED CASES

The instant petition for a writ of mandamus is related to two previous matters, involving the same case below and the same parties herein. Those two prior matters are as follows:

A. Ninth Circuit Court of Appeals Docket No. 90-55288

VICKI J. AZNARAN and RICHARD N. AZNARAN,
Plaintiffs, Counterdefendants, and Appellees,

vs.

CHURCH OF SPIRITUAL TECHNOLOGY,
RELIGIOUS TECHNOLOGY CENTER,
AUTHOR SERVICES, INC., and
CHURCH OF SCIENTOLOGY INTERNATIONAL,
Defendants, Counterclaimants, and Appellants.

This was an interlocutory appeal of the District Court's denial of defendants' motion for a preliminary injunction. The appeal was argued on May 8, 1991 before Circuit Judges Tang, Reinhardt and Wiggins. The Court denied the appeal by Memorandum filed July 11, 1991.

B. Ninth Circuit Court of Appeals Docket No. 91-70659

CHURCH OF SCIENTOLOGY INTERNATIONAL,
CHURCH OF SCIENTOLOGY OF CALIFORNIA,
RELIGIOUS TECHNOLOGY CENTER,
CHURCH OF SPIRITUAL TECHNOLOGY,
Petitioners,

vs.

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

VICKI J. AZNARAN and RICHARD N. AZNARAN, et al,
Real Parties In Interest.

This was a petition for a writ of mandamus (which petitioners did not related to the above-identified interlocutory appeal) taken from the District Court's denial of a motion to recuse the Honorable James M. Ideman. Circuit Judges Farris, Poole and Norris denied the petition by Order filed December 4, 1991. The same panel denied rehearing and en banc review by Order filed January 30, 1992. On May 26, 1992, Scientology's Petition for a Writ of Certiorari regarding its attempt to recuse Judge Ideman was denied by the United States Supreme Court in Case No. Case No. 91-1376

DATED: October 13, 1992

FORD GREENE and JOHN C. ELSTEAD
Attorneys for Plaintiffs
VICKI J. AZNARAN and RICHARD N.
AZNARAN

Addendum

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FILED

MAY 1 2 21 PM '81

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF

ASSIGNMENT OF CASES AND DUTIES TO JUDGES	GENERAL ORDER NO. 224 (Supersedes General Orders Nos. 83 and 84)

The assignment of cases and duties to the Judges of this Court shall be governed as follows:

1.0 CIVIL CASES

All cases of a civil nature shall be assigned to the individual calendars of the judges of this Court pursuant to this General Order.

1.1 FILING AND NUMBERING

All cases of a civil nature shall be numbered consecutively upon the filing of the first document in each such case. Numbering shall include the calendar year and consecutive number within that year e.g. 80-0001 etc., 81-0001 etc.

1.2 ASSIGNMENT CARDS

Assignment cards shall be prepared and sealed in plain envelopes under the supervision of the Chief Judge in such a manner that each judge of the Court over a period of time shall be assigned substantially an equal amount of work. The envelopes containing the assignment

cards shall be shuffled to provide a completely random assignment of cases to the judges of the Court.

Neither the Clerk nor any Deputy Clerk shall have discretion in determining the judge to whom any civil case shall be assigned. The action of the Clerk in the assignment of cases is ministerial only.

1.3 RANDOM SELECTION

The method for assignment of cases chosen by the judges shall be such that the judge to whom any particular matter is to be assigned, shall not be known by or disclosed to the Clerk, any member of his staff or any other person until after such case has been filed and numbered.

1.4 ASSIGNMENT TO A PARTICULAR JUDGE

The Clerk shall, after filing and numbering the case, withdraw a sealed envelope containing the initials of the judge to whom the case is to be assigned.

1.5 DEBITS AND CREDITS IN CIVIL CASES

The Clerk shall make all case-assignment debits and credits resulting from transfer under this General Order at the time assignment cards are next prepared.

2.0 PRISONER PETITIONS [28 USC § 2255]

A petition filed by a prisoner pursuant to 28 USC § 2255 claiming error in the judgment and commitment under which the prisoner is committed or in the proceedings leading up to such judgment and commitment shall be assigned to the judge who has ordered the commitment of the prisoner.

If the committing judge has taken senior status and chooses not to receive the petition or has died, or is otherwise unavailable to receive the petition, then the petition shall be processed as a civil action. The judge receiving the prisoner petition shall receive a credit against the general obligation to receive civil cases.

3.0 WRITS OF HABEAS CORPUS [28 USC § 2241]

Whenever a prisoner files a petition for Writ of Habeas Corpus, such petition shall first be reviewed by such committing judge, or if the committing judge has taken senior status, is deceased or otherwise unavailable, by the Chief Judge to determine whether or not the petition is cognizable under 28 USC § 2255. If the petition is not one cognizable under 28 USC § 2255 it shall be returned to the Clerk to be assigned in the same manner as other civil cases. If the petition is one cognizable under 28 USC § 2255 it shall be assigned pursuant to Paragraph 2.0.

4.0 TRANSFER OF CIVIL CASES BETWEEN JUDGES

4.1 VOLUNTARY TRANSFERS

The judge to whom any particular action or proceeding is assigned will have full charge of such case until terminated except that (1) the matter may be transferred by order of the transferor and transferee judge, or (2) by order of the Chief Judge, with the consent of the transferor and transferee judge. If such a transfer is made it shall be respectively debited and credited against the transferor and transferee judges' general obligation to receive civil cases.

4.2 VISITING AND SENIOR JUDGES - DEBITS AND CREDITS - Matters transferred to a visiting judge or senior judge shall be debited against the general obligation to receive cases of the transferor judge. Credits and debits made pursuant to this rule shall be made when the visiting or senior judge commences trial of the case transferred.

4.3 DISQUALIFICATION OR RECUSAL

If a judge is disqualified or recuses himself from a case for any reason it will be returned to the Clerk for assignment in the same manner as other civil cases. The disqualified or recused judge shall receive a debit against the

general obligation to receive civil cases.

4.4 PROLONGED ILLNESS OR UNAVOIDABLE ABSENCE

In the event of prolonged illness, disability, or other unavoidable absence of the judge to whom a civil case has been assigned, the Court may transfer from the calendar of such absent judge any case or cases deemed necessary to expedite the business of the Court and obtain justice for the litigants. Such case or cases shall be returned to the Clerk for assignment in the same manner as an original case assignment as provided in this General Order.

4.5 UNAVOIDABLE DELAY

The Court by concurrence of two-thirds of all the active and sitting judges (excluding the judge whose case is being transferred) may transfer any case assigned to a judge of this Court if delay in the processing of the case will be detrimental to the interest of justice, to the litigants, and if the calendar of the assigned judge cannot accomodate a reasonably early processing of the case. The judge from whose calendar the case is transferred shall receive a debit against the general obligation to receive civil cases. The case or cases shall be returned to the Clerk for assignment in the same manner as an original

case assignment as provided in this General Order.

5.0 MOTION TO DISQUALIFY A JUDGE

If a motion is made to disqualify a judge pursuant to 28 USC §§ 144 or 455 in any civil case assigned to the judge pursuant to this General Order, the motion shall be referred to the Clerk for assignment to another judge in the same manner as cases are assigned pursuant to this General Order. The judge to whom the motion is assigned shall promptly determine whether the motion is timely filed and is legally sufficient to require a hearing on the disqualification.

If the judge determines that the motion is not timely filed or that the motion is legally insufficient the motion will be denied and the case shall proceed as originally assigned.

If the judge determines that the motion is timely and legally sufficient the matter will be set down for hearing at the earliest time practicable. The judge against whom the motion has been filed shall not proceed with the case until the motion has been heard and determined.

If the judge denies the motion the case shall proceed as originally assigned. If the motion is granted the case shall be returned to the clerk for assignment in the same manner as an original case assignment as provided in this General Order.

5.1 MOTION TO DISQUALIFY - CREDIT FOR HEARING MOTION - If the motion to disqualify requires a hearing pursuant to Rule 5.0 the judge hearing the

motion shall receive a credit against the general obligation to receive civil cases of the hearing judge.

6.0 RELATED CASE TRANSFERS

6.1 PRELIMINARY SCREENING

The Clerk shall promptly examine the original complaint or petition in each civil case and ascertain whether any one or more civil cases previously filed and any one or more currently filed appear

a. to arise from the same or a substantially identical transaction, happening or event; or

b. involve the same patent, trademark or copyright, except where in one or both actions the same patent, trademark or copyright is joined with other patents, trademarks or copyrights which do not cover the same or substantially identical subject matter; or

c. call for determination of the same or substantially identical questions of law and fact; or

d. for other reasons would entail substantial duplication of labor if heard by different judges.

6.2 DETERMINATION OF RELATED CASE STATUS

Whenever it shall appear to the clerk that

any one or more of the above circumstances set forth in 6.1 exists it shall be the duty of the Clerk to report the cases in question to the judges concerned at the earliest date practicable.

6.3 TRANSFER ORDER

The Clerk's report pursuant to 6.2 shall be accompanied by a transfer order to be signed by the judges concerned with the proposed transfer. The transfer order shall be presented to the transferee judge in the first instance.

6.4 ASSIGNMENT TO JUDGE WITH LOW NUMBER CASE

All pending civil cases which fall within the related case transfer criteria of 6.1 a - d, shall be assigned to the judge to whom the case with the low number has been previously assigned (i.e. the case first filed bearing the lowest case number). An order for transfer of a case subject to this provision shall be made and entered at the earliest practicable date following commencement of the case.

6.5 LIMITATION OF RELATED CASE TRANSFER

Low number transfers shall be limited to 10 cases for which credit shall be given to the transferee judge on the general obligation to receive civil cases except as hereinafter provided.

6.6 RELATED CASE TRANSFERS IN EXCESS OF TEN

If there are more than 10 cases subject to this related case transfer provision the low number judge shall be required to accept all such cases in excess of 10 and shall receive credit on the general obligation to receive civil cases as determined by the Executive Committee taking into account the total number of cases, the difficulty in processing the cases so transferred and fundamental fairness to the litigants and the Court. All transferor judges transferring low number cases shall be debited with the case transferred against the general obligation to receive civil cases.

6.7 RELATED CASE TRANSFERS - CLOSED CASE - If a case is closed before the filing of a new pleading which would qualify as a related case pursuant to Rule 6.1 the case shall be assigned and transferred pursuant to Rule 6.4.

7.0 MULTIDISTRICT CASES

Cases subject to the provisions of 28 USC § 1407 and transferred pursuant to an order of the Panel on MultiDistrict Litigation shall be subject to this related case transfer provision as follows:

7.1 CASES TRANSFERRED TO THIS DISTRICT

Cases transferred to this District by the Panel on MultiDistrict Litigation shall be assigned to the judge designated by the Panel. The judge of this District receiving the assignment of those cases will be credited in the same mannerr as though the cases had originated in this District and transferred pursuant to the low number transfer policy of this Court. Credit shall be given to the transferee judge as provided in paragraphs 6.5 and 6.6 of this General Order.

7.2 CASES TRANSFERRED OUT OF THIS DISTRICT

Cases transferred from the calendar of any judge of this District by the Panel on MultiDistrict Litigation shall be debited in the same manner as though transferred as a related case to another judge of this Court.

7.3 CASES RETURNED TO THIS COURT FOR TRIAL

Cases returned to this Court for trial after processing by a MultiDistrict transferee judge in another district shall be re-assigned to the calendar of the judge from whom the transfer was originally made. At the time of such assignment the judge shall receive credit for the case against the general obligation to receive civil cases.

7.4 CASES RETURNED BY THE TRANSFEREE JUDGE TO THE ORIGINATING DISTRICT - Cases returned by the transferee judge to the originating Court shall be subject to being debited to the obligation to receive civil cases as determined by the Executive Committee taking into account the total number of cases and the difficulty of the work performed on the cases so transferred.

8.0 CRIMINAL CASES

All cases of a criminal nature shall be assigned to the individual calendars of the judges of this Court pursuant to this General Order.

8.1 ASSIGNMENT

Assignment of criminal cases to a judge of the the Court shall be by random selection by the Magistrate at the time of arraignment drawing a sealed envelope containing the initials of the judge to whom the case is to be assigned.

8.2 ASSIGNMENT CARDS

Assignment cards shall be prepared and sealed in plain envelopes under the supervision of the Chief Judge in the same manner as provided for civil case under paragraph 1.2 of this General Order.

Neither the Magistrate, Magistrate's Clerk nor any Deputy Clerk shall have discretion in determining the judge to whom a criminal case shall be assigned. The action of the Magistrate in the assignment of criminal cases is ministerial only.

8.3 DEBITS AND CREDITS IN CRIMINAL CASES

The Clerk shall make all criminal case assignment debits and credits resulting from transfer under this General Order at the time assignment cards are next prepared.

8.4 TEMPORARY ABSENCE OR UNAVAILABILITY IN THE DISTRICT

When a Judge may be either absent from the District, ill, or on vacation for more than two successive Mondays, he may instruct the Arraignment Calendar Magistrate that no cases are to be assigned to him for trial during the period of his absence, or that defendants in cases assigned to him are to be instructed to appear before him on a certain date for entering a plea and setting for trial, or that only cases in which the defendants are on bond shall be assigned to him, and other appropriate instructions. The Arraignment Calendar Magistrate shall follow the instructions as closely as reasonably possible. When an

assignment card of a Judge pursuant to this paragraph is drawn and the absent Judge has instructed that no case be assigned to him in the circumstances, the card will be put aside and held until the return of the absent Judge. An appropriate notation shall be made on the card, including the date upon which it was drawn, the number on the calendar and the case number. When the judge returns, or indicates that cases should be assigned for trial, a notation shall be made on the card that it has been returned to the wheel on a certain date, and the card shall again be placed in the wheel in a sealed envelope as before.

8.5 TRANSFER OR CRIMINAL CASES BETWEEN JUDGES

8.5.1 VOLUNTARY TRANSFER

Judges may voluntarily transfer case among themselves in the same manner as provided for in civil cases in paragraph 4.1.

8.5.2 VISITING AND SENIOR JUDGES

Criminal cases transferred to a visiting or senior judge shall be treated in the same manner as civil cases in paragraph 4.2.

8.5.3 DISQUALIFICATION OR RECUSAL

Criminal cases shall be handled in the same manner as provided for civil cases in paragraph 4.3.

8.5.4 PROLONGED ILLNESS OR UNAVOIDABLE ABSENCE

In the event of prolonged illness, disability or other unavoidable absence of a judge to whom a criminal case has been assigned the Court may transfer from the calendar of such absent judge any case or cases which shall be in jeopardy of violating the provision of the Speedy Trial Act of 1974 and its amendments 18 USC § 3161 et seq.

8.5.5 MOTION TO DISQUALIFY A JUDGE

If a motion is made to disqualify a judge pursuant to 28 USC § 144 or 455 in any criminal case it shall be handled in the same manner as provided for civil cases in paragraph 5.0.

8.6 RELATED CASE TRANSFERS - CRIMINAL CASES

8.6.1 RELATED INDICTMENTS

Where an information or indictment is filed concerning a defendant (1) arising out of the same transaction or series of transactions (2) involving the same defendant or (3) for other reasons would entail substantial duplication of labor if heard by a different judge, the matter shall be assigned to the calendar of the judge having the low-numbered indictment or information subject to the reservation provided in Paragraph 8.6.2.

8.6.1.1 REFERENCE TO CRIMINAL DUTY JUDGE - If the judge to whom the case is assigned pursuant to paragraph 8.6.1 feels the case is not a re-related indictment or information the matter shall be referred to the Criminal Duty Judge for final determination of the nature of the questionable assignment.

8.6.2 MULTIPLE DEFENDANTS

Where the original information or indictment and the later filed information or indictment does not have a majority of common defendants this rule shall not apply.

8.6.3 RULE 20

Where an information or indictment originating in another district is transferred to this Court pursuant to Rule 20 F.R.Cr.P. involving a defendant proceeded against by indictment or information in this District the Clerk shall place the Rule 20 transferred matter on the calendar of the judge to whom the matter arising in this District is assigned for disposition. No card credit shall be given to the judge to whom such Rule 20 matter has been assigned for disposition.

If an indictment is returned in this dis-

trict against a defendant who has a Rule 20 plea pending the indictment shall be referred to the judge to whom the Rule 20 plea has been assigned. No assignment credit shall be given for the subsequently assigned indictment.

8.6.4 INDICTMENTS PREVIOUSLY DISMISSED

Whenever an indictment has been dismissed before trial any new indictment involving the same transaction or series of transactions and at least a majority of the same defendants shall be assigned to the judge to whom the first indictment was assigned. No assignment credit shall be received for the succeeding indictment assigned pursuant to this sub-paragraph.

8.6.4.1 REFERENCE TO CRIMINAL DUTY JUDGE - If the Judge to whom the case is assigned pursuant to Paragraph 8.6.4 feels the case has been assigned improperly the matter shall be handled in the same manner as related indictments in Paragraph 8.6.1.1.

8.6.5 ASSIGNMENT CREDIT

Any assignments made pursuant to this General Order shall give the receiving judge assignment credit for the subsequently assigned case except as provided in paragraph 8.6.3 and 8.6.4.

8.6.6 RELATED CASE TRANSFER - DUTY OF U. S. ATTORNEY - It shall be the continuing duty of the United States Attorney to advise the Court through the Clerk of any matter which would be subject to the provisions of Rule 8.6.1, 8.6.2, 8.6.3, or 8.6.4.

8.7 PRESERVATION OF ASSIGNMENT CARDS DRAWN

All assignment cards drawn for case assignment shall be preserved as a record for two years after the end of the calendar year in which the card was drawn.

8.8 PREPARATION OF ASSIGNMENT CARDS AND PLACEMENT IN WHEEL

Criminal assignment cards shall be prepared under the direction of the Clerk and supervision and direction of the Chief Judge. After the close of business at the end of each calendar month, a sufficient number of cards shall be prepared for each judge receiving criminal case assignments to satisfy the requirements of one month's business and still leave approximately 60 cards in the assignment wheel at the end of the month.

8.9 CRIMINAL CASE - RETURN TO PENDING CASE FILE -

8.9.1 UNAVAILABILITY OF DEFENDANT - Whenever

a defendant because of physical disability or mental incompetency or fugitive status, becomes unavailable for trial, during or after trial, or after plea of guilty and it is anticipated the defendant cannot be available for more than 30 days, the judge to whom the case is assigned shall return the case to the Clerk's pending criminal case file. If the defendant shall thereafter become available the case shall be reassigned to the judge to whom the case was first assigned. No credit against the general obligation to receive criminal cases shall be given upon re-assignment of the case.

9.0 CRIMINAL DUTY JUDGE

9.1 CRIMINAL DUTY JUDGE - ESTABLISHMENT - There shall be provided in this Court a criminal duty judge who shall perform the duties in criminal cases assigned from time to time by general order.

9.2 CRIMINAL DUTY JUDGE - DUTIES - The criminal duty judge shall perform on behalf of the Court the the following duties:

. hear and determine all contempt matters arising from grand jury proceedings

. hear applications for and authorize or deny a request for grant of immunity brought on behalf of the United States.

. hear and grant or deny applications for wire-tapping and electronics surveilance brought on behalf on the United States.

. receive and examine jail lists and take appropriate action thereon when necessary to expedite the administration of justice.

9.3 CRIMINAL DUTY JUDGE - TERM - The judges, except the Chief Judge, in order of seniority shall rotate the criminal duty judge functions for a period of three months as provided by the order of the Chief Judge, general order or resolution of the Court.

10.0 NATURALIZATION DUTY JUDGE

I0.1 NATURALIZATION DUTY JUDGE - ESTABLISHMENT - There shall be provided in this Court a naturalization duty judge who shall perform the duties in naturalization and citizenship matters assigned from time to time by general order.

10.2 NATURALIZATION DUTY JUDGE - DUTIES - The naturalization duty judge shall perform on behalf of the Court the following duties:

. preside over proceedings admitting applicants to United States Citizenship

. hear and determine contested naturalization or denaturalization proceedings commenced during the term.

10.3 NATURALIZATION DUTY JUDGE - TERM - The judges except the Chief Judge, in order of seniority shall rotate the naturalization duty judge functions for a period of three months as provided by order of the Chief Judge, general order or resolution of the Court. No judge shall be required to perform naturalization duty judge functions within six (6) months of the performance of duties as criminal duty judge.

11.0 CRIMINAL DUTY AND NATURALIZATION DUTY ROSTER - The Executive Committee shall periodically review the roster of criminal and naturalization duty to provide for integration of newly appointed judges into the duty rosters as soon as practicable after appointment.

This General Order shall be effective May 1, 1981.

A. Andrew Hauk, Chief Judge

Robert M. Takasugi

William P. Gray

Laughlin E. Waters

Manuel L. Real

Mariana R. Pfaelzer

May 1, 1981

GENERAL ORDER NO. 224

Robert J. Kelleher

Terry J. Hatter, Jr.

Wm. Matthew Byrne, Jr.

A. Wallace Tashima

Lawrence T. Lydick

David V. Kenyon

Malcolm M. Lucas

Consuelo B. Marshall

UNITED STATES DISTRICT JUDGES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

IN THE MATTER OF THE AMENDMENT OF GENERAL ORDER 224 RE: MULTIPLE MOTIONS TO DISQUALIFY	)	GENERAL ORDER 224-A

IT IS HEREBY ORDERED that General Order 224 be amended at section 5.2 as follows:

"5.2 MULTIPLE MOTIONS TO DISQUALIFY

If more than one motion to disqualify the same judge is made in the same case or in related or consolidated cases, the assignment and transfer of all such motions subsequent to the first motion shall be made in accordance with paragraph 6.0."

DATED: June 7, 1982

Chief Judge A. Andrew Hauk

Laughlin E. Waters

Manuel L. Real

Mariana R. Pfaelzer

Robert J. Kelleher

Terry J. Hatter

Wm. Matthew Byrne, Jr.

A. Wallace Tashima

Lawrence T. Lydick

Malcolm M. Lucas

Robert M. Takasugi

David V. Kenyon

Consuelo B. Marshall

Cynthia H. Hall

UNITED STATES DISTRICT JUDGES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

IN RE AMENDMENT OF GENERAL ORDER NO. 224; BANKRUPTCY CALENDAR	GENERAL ORDER NO. 224-B

I. BANKRUPTCY DUTY JUDGE

On October 4, 1982, and thereafter, so long as the Local Bankruptcy Referral Rules, adopted by General Order No. 242, are in effect, one or more of the judges of the Court shall be designated as the Bankruptcy Duty Judge. The judges of the Court, excepting the Chief Judge, shall serve in this capacity in rotation, as provided by order of the Chief Judge or general order or resolution of the Court. The Bankruptcy Duty Judge shall perform on behalf of the Court the duties specified in Rule 104 of the Local Bankruptcy Referral Rules and such other duties in bankruptcy cases assigned from time to time by general order. The term of such service shall not exceed three (3) months, as set by the order of appointment. No judge shall be required to serve as Bankruptcy Duty Judge at the same time as or within six (6) months of service as the Criminal Duty Judge or Naturalization Duty Judge.

II. General Order No. 224 is hereby amended by adding thereto the following section 1.6:

1.6 BANKRUPTCY CASES

No bankruptcy case, matter or proceeding shall be deemed to be a "case of a civil nature," as that term is used in Section 1.0, until the time for the assignment of such case to the individual calendar of a district judge under Rule 105 of the Local Bankruptcy Referral Rules, at which time the provisions of this General Order No. 224 shall apply to such case.

Dated: _____

Chief Judge A. Andrew Hauk

Mariana R. Pfaelzer

Manuel L. Real

Terry J. Hatter, Jr.

Robert J. Kelleher

A. Wallace Tashima

Wm. Matthew Byrne, Jr.

David V. Kenyon

Lawrence T. Lydick

Consuelo B. Marshall

Malcolm M. Lucas

Cynthia H. Hall

Robert M. Takasugi

Richard A. Gadbois, Jr.

Laughlin E. Waters

UNITED STATES DISTRICT JUDGES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In Re AMENDMENT OF GENERAL ORDER NO. 224 RELATED CASE TRANSFERS	GENERAL ORDER NO. 224-C

General Order No. 224 Assignment and Duties to Judges is amended by adding:

6.1.1 EXCEPTIONS

A complaint or petition shall not be considered for transfer as a related case if the lower numbered case has been closed unless:

a. the case was closed without a determination of the merits, or

b. the case has been determined on the merits and been closed for less than one (1) year.

DATED: October 21, 1982.

Chief Judge Manuel L. Real

Laughlin E. Waters

Robert J. Kelleher

Mariana R. Pfaelzer

Wm. Matthew Byrne, Jr.

REFUSE TO SIGN
A. Wallace Tashima

Lawrence T. Lydick

David V. Kenyon

GENERAL ORDER NO. 224-C

Malcolm M. Lucas

Consuelo B. Marshall

Robert M. Takasugi

Cynthia H. Hall

Terry J. Hatter, Jr.

Richard A. Gadbois, Jr.

Edward Rafeedie

UNITED STATES DISTRICT JUDGES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ASSIGNMENT OF BANKRUPTCY CASES AND PROCEEDINGS

GENERAL ORDER NO. 224-D

I. BANKRUPTCY DUTY JUDGE

In accordance with General Order No. 224-B, the following other duties in bankruptcy cases and proceedings are hereby assigned to the Bankruptcy Duty Judge:

All motions, applications and other proceedings before the district court in all cases and proceedings referred to bankruptcy judges under the Local Rule Governing Bankruptcy Cases and Proceedings, which have not been assigned to the calendar of an individual judge of this district, shall be made before or referred to the Bankruptcy Duty Judge. Such motions, applications and other proceedings shall include:

(A) Motions for withdrawal of reference under Rule (c)(2);

(B) Motions for stay under Rules (c)(2) and (d)(2);

(C) Motions for expedited review under Rule (e)(3);

(D) Applications for leave to appeal an interlocutory

order of a bankruptcy judge and for modification of time for appeal under Rule (e)(1);

(E) Review of orders and final judgments under Rule (e)(2)(A)(ii);

(F) Matters arising under Rule (e)(2)(A)(iii), whether or not a notice of appeal or application for leave to appeal has been filed; and

(G) Proceedings enumerated in Rule (d)(1)(A)-(D).

In the absence of the Bankruptcy Duty Judge, the matter shall be referred to the judge designated to handle matters in the absence of the Bankruptcy Duty Judge. If no such designation has been made or if the designated judge is absent, the matter may be referred to any available judge.

II. INDIVIDUAL ASSIGNMENT OF BANKRUPTCY CASES AND PROCEEDINGS

The following matters in bankruptcy cases and proceedings shall be assigned to the individual calendar of the judges of this Court, as provided by General Order:

(A) Any matter in which the reference is withdrawn under Rule (c)(2), unless the entire matter, or substantially the entire matter, is referred back to the bankruptcy judge by the Bankruptcy Duty Judge.

(B) Any matter in which a timely notice of appeal has been filed or a timely application for leave to appeal has been granted to be reviewed by the district court under Rule (e)(2)(A)(i).

(C) Any matter referred to the Bankruptcy Duty Judge under Paragraphs (E), (F) and (G) of Section I, above, which, in the discretion of the Bankruptcy Duty Judge, is referred for

assignment to the individual calendar of the judges of this Court.

III. CONCURRENT JURISDICTION AMONG BANKRUPTCY JUDGES

Each of the bankruptcy judges of this district shall have concurrent district-wide jurisdiction to act in any and all cases and proceedings in bankruptcy referred to any bankruptcy judge in this district, at the request of the latter or upon order of any district judge of this Court. Referred cases and proceedings may be transferred in whole or in part between bankruptcy judges within the district without approval of a district judge.

Dated: December 27, 1982

Chief Judge Manuel L. Real

Terry J. Hatter, Jr.

Robert J. Kelleher

A. Wallace Tashima

William Matthew Byrne, Jr.

David V. Kenyon

Lawrence T. Lydick

Consuelo B. Marshall

Malcolm M. Lucas

Cynthia H. Hall

Robert M. Takasugi

Richard A. Gadbois, Jr.

Laughlin E. Waters

Edward Rafeedie

Mariana R. Pfaelzer

UNITED STATES DISTRICT JUDGES

May 1, 1981

GENERAL ORDER NO. 224

Robert J. Kelleher

Terry J. Hatter, Jr.

Wm. Matthew Byrne, Jr.

A. Wallace Tashima

Lawrence T. Lydick

David V. Kenyon

Malcolm M. Lucas

Consuelo B. Marshall

UNITED STATES DISTRICT JUDGES

UNITED STATES DISTRICT COURT

CENTRAL DISTIRCT OF CALIFORNIA

In Re)
AMENDMENT OF GENERAL)
ORDER NO. 224)
RELATED CASE TRANSFERS) GENERAL ORDER NO. 224-E
)

IT IS HEREBY ORDERED THAT General Order 224 be amended as follows:

6.1.2 IDENTICAL CASES

Notwithstanding the provisions of section 6.1.1, when a case is closed and the identical case is refiled, the complaint or petition shall be transferred to the originally assigned Judge and no case credit shall be given to the originally assigned (transferee) Judge. The transferor Judge shall receive one debit in the general obligation to receive civil cases.

DATED: 2-20-87

Chief Judge Manuel L. Real

Terry J. Hatter, Jr.

Wm. Matthew Byrne, Jr.

Wallace A. Tashima

Robert M. Takasugi

David V. Kenyon

Mariana R. Pfaelzer

Consuelo B. Marshall

GENERAL ORDER NO. 224-E

Richard A. Gadbois, Jr.

James M. Ideman

Edward Rafeedie

William D. Keller

Pamela Ann Rymer

Ferdinand F. Fernandez

Harry L. Hupp

Stephen V. Wilson

Alicemarie H. Stotler

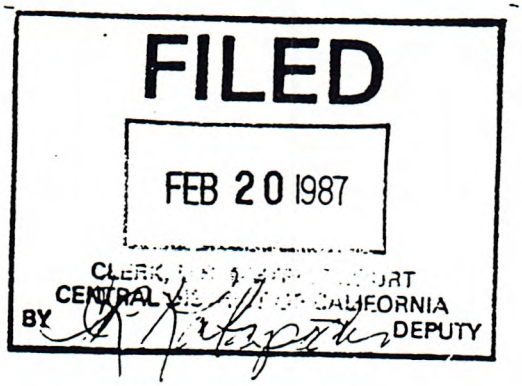
J. Spencer Letts

William J. Rea

Dickran Tevrizian

John G. Davies

UNITED STATES DISTRICT JUDGES



UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In re General Order 224 Related Case Transfers: - Establishment of Related Case Assignment Committee and - Repeal of Section 6.6 Related Case Transfers in Excess of Ten	GENERAL ORDER NO. 224-F

WHEREAS, related cases in excess of ten (10) are frequently filed with the Court, and

WHEREAS, Judges who accept related cases in excess of ten (10) do not receive additional case credit, and

WHEREAS, because of the present case credit system there are many occasions where related cases in excess of ten (10) are assigned to numerous Judges, and

WHEREAS, frequently there are related cases in excess of ten (10) which are best handled for pre-trial purposes by one Judge,

NOW, THEREFORE, it is hereby resolved that a Related Case Assignment Committee be established to carry out the procedures outlined below.

1. All related cases in excess of ten (10) shall be reported to the Committee by the Clerk of Court.

   Any Judge, at his or her option, may bring a lesser number of related cases to the attention of the Committee for their review and action.

2. Related cases referred to Committee shall be reviewed by the Committee for assignment to a Judge to hear all proceedings through pre-trial or for as long as the assigned Judge feels appropriate. The Judge originally assigned the first ten (10) related cases shall be given the right of first refusal to keep the related cases

as the assigned Judge. If the originally assigned Judge declines the related cases, the committee shall nominate a Judge for the assignment. If the nominee does not accept the assignment, the Committee shall make another nomination. No assignment will be made without the voluntary consent of the nominated Judge.

3. The Committee shall determine the amount of case credit the assigned Judge receives for performing these pre-trial duties and may, from time to time, adjust the credit.

4. The assigned Judge is thereby obligated to receive all related cases that are filed. The Clerk shall make all subsequent transfers without the signatures of the assigned Judge or transferor Judge.

5. Any Judge who receives a related case, either before or after the appointment of the assigned Judge, must relinquish that case to the assigned Judge. The determination of whether a case is a related case shall be made by the Committee. All transferor Judges shall be debited for each case transferred against the civil judicial assignment cards.

6. If the Judge originally assigned the first ten (10) related cases accepts the related cases as the assigned Judge, the Magistrate originally assigned the first ten (10) related cases shall be assigned to the related cases for use by the assigned Judge. If the Judge originally assigned the first ten (10) related cases declines the related cases as the assigned judge, the Committee shall assign a Magistrate to the related cases for use by the assigned Judge.

7. After pre-trial or at time deemed appropriate by the assigned Judge, the assigned Judge may refer the related cases back to the Committee for trial assignment. If referred, the Committee shall assign the trials to the Judges in seniority order. The trial Judges shall receive one credit against the civil judicial assignment cards. The transferor Judge shall not receive debits when transferring cases to Judges for trial.

The Committee shall be comprised of five (5) members, appointed by the Court, who shall serve staggered three (3) year terms.

The current members of the Low Number Rule Committee, with one additional appointed member, are willing to serve as the first members of the Related Case Assignment Committee.

The Committee may apply this Resolution retroactively to related cases currently pending.

IT IS ORDERED THAT Section 6.6 of General Order 224 is hereby repealed.

DATED this 24th day of ~~January~~ February, 1987.

Chief Judge Manuel L. Real

Wm. Matthew Byrne, Jr.

Robert M. Takasugi

Mariana R. Pfaelzer

Terry J. Hatter, Jr.

A. Wallace Tashima

David V. Kenyon

Consuelo B. Marshall

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Ferdinand F. Fernandez

Stephen V. Wilson

J. Spencer Letts

Dickran Tevrizian

John G. Davies

DISTRICT COURT JUDGES

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: PETITION FOR WRIT OF MANDAMUS; EXCERPTS FROM THE RECORD

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California: SEE SERVICE LIST

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the united States Mail at San Anselmo, California.

[X] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: October 13, 1992

Aznaran v. Scientology: Service List

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